

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO.191 OF 2010

IN THE MATTER OF CHRIS MUGISA AND SETH KIRABO JEROMY (INFANTS)

AND

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY
CHRISTIAAN VAN DEN BERG AND JURJANNE BEITSKE DIJKSTRA**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants, Dutch citizens, bring this application under **Article 139 (1), 34 (1) and (2)** of the Constitution of Uganda 1995, **sections 14, 33 and 39** of the Judicature Act, cap 13 and **sections 2, 3, 4, 5, and 6** of the Children Act for orders that:-

1. The applicants be appointed the legal guardians of the children, Chris Mugisa and Seth Kirabo Jeromy.
2. The applicants be permitted to travel with the children outside Uganda as and when the need arises in order to fulfill their parental rights and responsibilities.

The application is supported by the affidavit of the 1st applicant Jurjanne Beitske dated the 20th September, 2010.

The grounds of the application are as follows:-

1. The child Mugisa was found abandoned and was rejected by his parents at his home in Seeta Mukono.
2. That the child was taken to Noah's Ark for care and custody but at the time he was emaciated and malnourished and needed urgent medical attention.

3. That the applicants eventually obtained foster care placements in respect of this child and he is in their care and custody.
4. That the child Seth Kirabo Jeromy was found abandoned in a bus at Buganda Bus Park on 15th day of February, 2010 aged approximately one (1) week.
5. That the child was forwarded to Nsambya Babies Home for care and custody.
6. That Seth's parents are unknown and all attempts to locate them has proved futile.
7. Both children are vulnerable and need parental care.
8. That other than the applicants, there is no one who is willing and ready to look after Chris Mugisa and Seth Kirabo Jeromy.
9. That it is in the best interests of the children that the applicants be granted their legal guardianship with a view to adopting them eventually.

At the hearing of the application, the applicants were represented by Ms. Victoria Katamba.

The High Court has original unlimited jurisdiction on all matters.

See **Article 139 (1)** of the Constitution.

The Judicature Act, **section 14**, gives the same jurisdiction to the court.

In the exercise of that jurisdiction, the High Court has powers to grant remedies absolutely or on such terms as it thinks fit.

See **Section 33** of the Judicature Act.

A child has been defined as any person below 18 years of age.

See **section 2** of the Children Act.

The child, Chris Mugisa is 2 years and 6months (see report of the Probation and Social Welfare Officer Nakawa Division, Kampala District).

They are therefore children within the meaning of the Children Act.

Issue No. 1 – whether the application is for the welfare and in the best interests of the children, Chris Mugisa and Seth Kirabo?

In making any decision concerning a child, the welfare of the child is paramount.

See: **Section 3** and **paragraph 1(b)** of the First Schedule to the Children Act.

Counsel for the applicant submitted that, the child Chris Mugisa, was on 24/2/2009, referred to Noah's Ark Children's Ministry, Uganda, from the child and Family Protection Unit police in Mukono as a child in need of care and protection, after his father and stepmother were arrested for child neglect and abuse and there was no information of his biological mother.

The mother, who had gone to Mombasa, however appeared later and was in court at the hearing of the application and has given her consent in court at the hearing of the application.

The child was put in the care of Noah's Ark and eventually in the care of the applicants – see Care order on the court record.

The child, Seth Kirabo Jeromy, was found abandoned opposite New Taxi parks and was committed into the care of Nsambya Babies Home under care Application No. 431 of 2010. On 7th April, he was taken into the Foster Care of the applicants under care order No. 46 of 2010 – See order on the court record.

Counsel contended that, Seth's parents are not known and all attempts to locate his parents have proved futile. Further, that the children are vulnerable and in need of parental care.

In view of the above, court is of the opinion that, the application if granted, will be for the welfare and in the best interests of the children.

The 2nd issue is whether the applicants are suitable guardians for the children?

Ms. Victoria Katamba submitted that, the applicants are Dutch citizens residing in Ntinda and working with an NGO called Trin New lease of Life for Uganda (see copy of the LC1 letter and employees letter) on the court record.

That the applicants' work permits expire on 28-5-2010 and they are gainfully employed and are financially capable of looking after the 2 children.

That the applicants are married, copies of their marriage certificate on the court file.

Counsel submitted that the applicants have bonded with the children and love them and they took Seth Kirabo when he had another rectal malformation, but they have managed to nurse him back to health, after taking him for an operation at their cost – see Discharge Form “E” on the court record.

The applicants are suitable guardians because even when they were reminded of the medical condition of Seth Kirabo, they decided to look after him and care for him.

Ms. Katamba argued that, the applicants have no criminal record, and that they are law abiding citizens – see copies of their criminal clearance certificates – Annextures “O”.

Ms. Katamba submitted further that, the applicants have undergone a Home Study and been found suitable adoptive parents.

In view of the above, court is of the view that, the applicants are suitable guardians for the child.

Consequently, the application is allowed in the following terms and conditions:-

1. The applicants, **Christiaan Van Den Berg and Jurjanne Beitske Dijkstra** are appointed the legal guardians of **Chris Mugisa** and **Seth Kirabo Jeromy**.
2. The applicants are directed to register the order with the Registrar of Documents, Uganda Registration Services Bureau, Ministry of Justice and Constitutional Affairs, Kampala.
3. The applicants are directed to register the order with the Netherlands Embassy in Kampala and the Ugandan Embassy in the Netherlands.

4. The applicants are directed to obtain Ugandan passports for the children and renew them from time to time as required by the law.
5. The applicants are permitted to travel out of Uganda with the children.
6. The applicants are permitted to adopt the children in the Netherlands
7. The applicants are directed to register the order with the authority responsible for family and child welfare in the Netherlands, and file a report once every year to the Registrar Family Division, High Court, and Kampala, regarding the state of the welfare and development of the children until the children are 18 years of age or until directed otherwise.
8. The court makes no orders as to costs.

Margaret C. Oguli Oumo

JUDGE

26/10/2010

Present:

1. Mrs. Katamba Victoria for the applicants
2. Betty Lunkuse, court clerk
3. Nantamu Oliver, Research Assistant.