

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
FAMILY CAUSE NO. 174 OF 2010
IN THE MATTER OF JOSEPH MUWANGUZI (CHILD)
AND
IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS LEGAL
GUARDIANS OF MUWANGUZI JOSEPH (AGED ONE AND AHALF YEARS) BY
SAMUEL LUCAS JOBE AND JOY COLLEEN JOBE
BEFORE: HON. LADY JUSTICE MARGARET OGULI OUMO

RULING:

The applicants bring this application under **Article 139(1)** of the Constitution of the Republic of Uganda 1995, **section 14, 33 and 39** of the Judicature Act, cap 13 and **section 3** of the Children Act, cap 59 for orders;

- a) That Samuel Jobe Lucas and Joy Colleen Jobe be appointed legal guardians of Muwanguzi Joseph.
- b) That the infant be allowed to immigrate to the USA with the applicants.

The application is supported by the statutory declarations of the applicants, affidavits of Ken Mulago - Director M/S Hope Ministries and the Local Council Chairman, Mangeni Julius Buluma - the officer in charge of Child and Family Protection Unit, Busia Police Station, Nyebaze Eva- the Probation and Social Welfare Officer, Busia District Local Government, Julius Ogallo.

The grounds of the application are briefly as follows:-

- i) That the infant was abandoned.
- ii) That the parents of the infant are unknown and there are also no known relatives of the infant.

- iii) That the applicants wish to provide the infant with emotional and psychological needs and to give him parental love and care.
- iv) That this application is for the welfare and benefit of the infant.

The High Court has original unlimited jurisdiction over all matters under **Article 139** of the Constitution. The Judicature Act, **Section 14**, grants the same jurisdiction to the court.

In the exercise of that jurisdiction, the High Court has powers to grant remedies absolutely on such terms as it thinks fit. This is set out in **Section 33** of the Judicature Act.

In **Section 2** of the Children Act, a child has been defined as any person below 18 years of age.

The infant here is 2 years and is therefore a child within the meaning of the Act. This is supported by a copy of the birth certificate, Annexure “C”.

Issue No. 1 – whether the application is for the welfare and in the best interests of the child?

In making any decision concerning a child, the welfare of the child is paramount. This has been set out in **Section 3** and **paragraph 1(b)** of the First Schedule to the Children Act.

Counsel for the applicants, Ms. Dora Mirembe submitted that the child was on the 21st June, abandoned by an unknown person at Market Street, Busia town in Busia District.

The child was taken to Busia police station on 22nd June, 2009 and the case was reported by John Ouma.

That at the police station, the child was received by one Nyebaze Eva, the officer in charge, Child and family Protection Unit, Busia Police station. On 22nd June, 2009, after making independent inquiries, the officer confirmed that, the child had been abandoned.

Counsel submitted that thereafter, the child was referred to the Probation and social Welfare Officer who requested one Mulago Ken of M/s New Hope Children’s home to keep the child. New Hope Ministries is a registered home and Annex “A” confirms this.

Counsel for the applicants submitted that, the child was placed in the care of New Hope Ministries, an NGO based in Busia of which the applicants are members of the Organization's sponsorship scheme. A care order marked Annex "E" is attaché to the court file.

Mr. Ken Mulago depones that he has no income of his own or resources to look after the infant and New Hope Ministries only depends on well wishers.

In view of the fact that the child has no known relatives and there is no one willing and ready to look after him, court is of the view that, the application if granted will be for the benefit and welfare of the child.

Issue No. 2 – whether the applicants are a suitable guardians for the child?

Ms. Dora, learned counsel for the applicants submitted that, the applicants are American citizens residing in Font Leverewoth, Kansas, USA. Copies of their passports are annexed on the Applicants' respective affidavits and marked Annex "A".

The First applicant is 36 years of age, and the second applicant is 35 years of age. This is confirmed by copies of passports on the court record.

The applicants are married a copy of the marriage certificates – Annexure "B".

The applicants have 2 children namely;

1. Leslie Jane Jobe – 6 years and
2. Sarah Adeline Jobe – 5 years

Copies of their birth certificates are on the court file as Annexure "C1" and "C2" respectively.

Ms. Dora Mirembe submitted that, Mr. Samuel Lucas Jobe is employed as a pilot with the United States Air Force and a copy of a letter from his employer is attached as Annexure "B" to his statutory declaration.

The second applicant Joy Colleen Jobe is a stay home mum as per paragraph 4 of her statutory declaration.

Counsel submitted that, the applicants have undergone, a Home Study and have been recommended as suitable for adoptive purposes as seen in Annexure “E” to second applicants, statutory declaration.

Counsel contended that, both applicants have no criminal record and have been cleared of the offence of child abuse. This has been confirmed by copies of their clearance certificates – Annexure A1 and A2 to the statutory declaration.

The Probation Officer Busia, Mr. Julius Ogallo, has also recommended the applicants basing on the background of the infant and the circumstances in which he was found. In his report, the Probation officer states that it is in the best interest of the child to be under the guardianship of the applicants.

In view of the above, it is courts’ opinion that the applicants are suitable guardians for the infant.

Counsel submitted that, according to **section 3** of the children Act, the child’s welfare is paramount in determining issues relating to children and under **section 4 (2)** of the Children Act, which provides that, where a competent authority determines in accordance with the law and procedure applicable that it is in the best interests of the child to separate him/her from the parent, the best substitute care shall be provided.

That the application is for the welfare of the infant, for the following reasons;

1. The infant was abandoned.
2. The infant’s relatives/parents are not known.
3. The applicants wish to provide the infants, emotional, psychological needs and to give him parental and care
4. That this application if granted is for the welfare and benefit of the infant.

In view of the above, and considering that the child was abandoned, the relatives and parents are not known and there is no one willing and ready to provide him with parental love and care and an institute is not the best environment for him to grow up in, especially since what is available cannot guarantee him any sustained care, granting the application is in the best interest and welfare of the child.

Consequently, the applicants are appointed legal guardians of the child; in the following terms and conditions:-

1. The applicants, **Samuel Lucas Jobe and Joy Colleen Jobe** are appointed legal guardians of the child, **Muwanguzi Joseph**.
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 United States Embassy in Kampala and the Ugandan Embassy in Washington.
4. The applicants are directed to obtain a Ugandan passport for the child and renew it from time to time as required by the law.
5. The applicants are permitted to travel out of Uganda with the child in order to be able to discharge their parental rights and responsibilities.
6. The applicants are permitted to adopt the child in the USA.
7. The applicants are directed to register the order with the authority responsible for family and child welfare in Washington, 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 child until the child is 18 years of age or until directed otherwise.
8. The court makes no order as to costs.

MARGARET C.OGULI OUMO

JUDGE

15/10/2010

Present,

1. Rebecca Mugabi for the Applicants
2. Betty Lunkuse, court clerk
3. Nantamu Oliver, Research Assistant.