

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN IN KAMPALA

FAMILY CAUSE NO.114 OF 2010

IN THE MATTER OF KYARUKUNDO BYAMUKAMA A

IDAN INNOCENT (MINOR)

AND

**IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF KYARUKUNDO BYAMUKAMA
AIDAN INNOCENT ORDER BY MICHAEL KYLE EDWARDS AND TORIA ANNE ARGO EDWARDS**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING

This is an application brought by Michael Kyle Edwards and Toria Anne Argo Edwards under **Article 139(1)** of the Constitution of Uganda, 1995, **SS. 14** of the Judicature Act, cap 13, **SS. 2,3,4,5 and 6** of the Children Act, cap 59 and **O. 52 rr. 1 and 3** of the Civil Procedure Rules S. 1 No.71-1, for the following orders:-

1. That the applicants be granted legal guardianships of the child Kyorukundo Byamukama Aidan Innocent.
2. That consequent upon being appointed legal guardians of the infant, the applicants be permitted to migrate with the infant to the United States of America where the applicants reside, in order to provide parental guidance and care for the child's' education, guidance, shelter, clothing, medical needs, maintenance and other basic necessities of life.
3. That costs of this application be provided for.

The application is supported by the affidavit of the first applicant dated 20th April, 2010 and the report of the Probation and Social Welfare Officer of Makindye Division, as well as the affidavit of Samuel Namalabe, a social worker with Loving Hearts, dated 2nd June, 2010.

The grounds of the application are as follows:-

- A. That the child was abandoned and efforts to trace for the child's parents and relatives have proved futile.
- B. That the child being in need of care and protection was committed to the care of Loving Hearts babies Home.
- C. That the applicants are ready and willing to immigrate with the child to the United States of America where they reside and to provide the child with love, warmth and a healthy family environment.
- D. That the applicants have been found to be suitable adoptive parents by the Probation and social Welfare Officer of their country of origin.
- E. That it is in the best interest of the child that the applicants be granted legal guardianship.

At the hearing of the application the applicants were represented by Mr. Obiro Ekirapa Isaac.

The High court has unlimited jurisdiction over all matters. This is provided for under **Article 139 (1)** of the Constitution and **Section 14** of the Judicature Act

In the exercise of that jurisdiction, the High Court has powers to make such orders as are necessary in the interest of Justice and to prevent the abuse of court process. This has been set out under **section 98** of the civil Procedure Act.

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

The child here is about one year and one month old. This is confirmed by a copy of the birth Certificate on the court record.

He is therefore a child within the meaning of the Act.

The first issue is whether the grant will be for the welfare of the child?

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

In the case of *In Re M (infant) S.C.C.A NO. 2294*, J. Odoki as he then was held that, in matters of adoption as in all matters concerning children, the welfare of the child is of paramount consideration.

Counsel for the applicant submitted that the child was abandoned at Mbarara referral hospital on the 11th July, 2009. This is supported by a letter dated 13th July, 2009 from the hospital to the Probation Officer, Mbarara.

Counsel submitted that, the child was abandoned by the mother Kyarukundo Justine from Mbarara - Isingiro district, and consequently, the matter was reported to the Probation Officer.

Counsel further submitted that eventually, the child was committed to Watoto Children's Home as a temporary measure, and later a care order was granted to Loving Hearts under a care order dated 27th Jan, 2010 and marked Annexure "B" on the court record.

Mr. Obiro contended that efforts to trace the child's parents/relatives proved futile after the child's photograph was advertised in the Monitor Newspaper of 1st February, 2010, calling for the mother to come and pick the child.

Counsel submitted that, according to the affidavit of Mr. Namalabe on the court record, an institution is not the best place for a child to grow up in, and the applicants are willing and ready to provide this child with a home.

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

Issue No 2 - whether the applicants are suitable guardians for the child?

Mr. Obiro, learned counsel for the applicants submitted that the applicants are American citizens as is evidenced by copies of their passports on the court record.

Further, that the applicants were married on 19th November, 2002 and a copy of their marriage certificate is attached on the court record.

Mr. Obiro submitted that Mr. Edwards is employed with GameStop as a sales associate and with G.E.T Construction, while his wife, the second applicant is a Special Education Teacher with Vestavia Hills City School. A letters from the applicants' employers are attached to the court file.

Counsel further submitted that Michael graduated in Biblical Studies and has a Degree in theology, while the second applicant has a bachelor's Degree of science in Special Education and a Master's degree of Science in the same field. Copies of their academic certificates are attached on the court record.

Applicants' counsel submitted that the applicants heard about the child from the Director Loving Hearts and purposed to take him as their own, love and adopt him in their home country. He added that Turley Emmy, the one who informed them is the Director Loving Hearts.

Mr. Obiro submitted that the applicants have been found to be suitable Adoptive parents by an organization called Life Line Children Services and a report to that effect is attached to the court record.

Further, that the applicants have no criminal record as per the Alabama Bureau of Investigations (ABI) report attached on the court file.

Counsel further submitted that the applicants do not suffer from any contagious or infectious diseases or any physical or mental impairment that would affect or endanger the child. This is confirmed by the physical and medical examination report on the court file.

Counsel submitted that the applicants are aged;

1. Michael 27 years
2. Toria, 26 years.

Further, that the applicants have not paid any money to any person or organization and have not given the same to any person in respect of this order.

In conclusion, Counsel submitted that the applicants will provide the child with a healthy family environment since they are happily married and are financially stable.

In view of the fact that the applicants are adults, are gainfully employed and married and have no criminal record, court is of the view that, the applicants are suitable guardians for the child.

Under **Article 34(1)** of the Constitution of Uganda, a child has a right to know and be taken care of by its parents or guardians who are legally supposed to provide for him

Under **section 4 (1)** of the Children Act, a child has a right to live with its parents or guardians.

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

1. The applicants are appointed legal guardians of the child Kyarukundo Byamukama Aidan Innocent.
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 Uganda Embassy in Washington.
4. The applicants are directed to obtain a Ugandan passport for the child and to 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 comply with their parental duties and obligations under **Article 34(1)** of the Constitution and **sections 4 and 5** of the Children Act.
6. The applicants are permitted to adopt the child in the USA as he is an abandoned child, the parents cannot be traced and it is only the applicants who are willing and ready to look after him, and it is for his welfare that he is adopted as it will enable the applicants to fix his residence in the USA permanently and he can benefit from the entitlements given to biological and Adoptive children.

7. The applicants are directed to file a report once every year, regarding the state of the welfare and development of the child with the Registrar, Family Division, and High Court of Uganda, and to continue to do so 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

4/10/2010

Present;

1. Mr. Obiro Ekirapa Isaac for the applicants
2. Betty Lunkuse, court clerk
3. Nantamu Oliver, Research Assistant.