

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**FAMILY CAUSE NO. 188 OF 2010**

**IN THE MATTER OF AJWANG SANDRA**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP OF AJWANG SANDRA BY SSEMANDA MBUGA MOSES AND SSEMANDA HOPKINS JOYCE**

**BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO**

**RULING:**

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

1. Semanda Mbuga Moses be appointed legal guardians of Ajwang Sandra.
2. Ajwang Sandra be allowed to travel to the USA for medical treatment with her legal guardian.
3. Costs of the application be provided for.

At the hearing of the application, the applicant was represented by Mr. Charles Majoli.

The High Court has original unlimited jurisdiction over all matters in Uganda.

**See: Article 139 of the constitution**

**Section 14** of the Judicature Act, on similar terms grants 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 minor here is 11 years of age – see care order on the court record. She is therefore a child within the meaning of the children Act.

**The first issue is whether the application is for the welfare of the child and in her best interests?**

Mr. Majoli submitted that, the child is a double orphan under the care of Gospel Messengers of Holiness and Righteousness who have been looking after her for six years, since they obtained a care order 24/3/2004.

That Ajwang Sandra was recently diagnose with Osteomyelitis in both her tibia and she was accepted by Shrine Hospitals for children for medical treatment on condition that, she has a guardian with her as required by the Embassy.

Counsel submitted that, the applicant is travelling with the child and the Probation Officer Makindye has recommended that the applicant be granted guardianship – see Probation Officer’s report on court record.

Mr. Majoli submitted that, this application is for the welfare and best interests of the child.

In view of the above, court is of the view that, the application if granted will be for the welfare of the child and will be in her best interest, as it will save her from a life threatening illness.

**The 2<sup>nd</sup> issue is whether the applicant is a suitable guardian for the child?**

Counsel for the applicant submitted that, the applicant is a Director and Pastor of the organization caring for the child, however the applicant is married to Semanda Hopkins Joyce – see copy of affidavit.

In view of the above, it is courts view that it would not be wise to grant the applicant alone legal guardianship of a female child, when his wife is alive and has not consented. She has instead filed an affidavit that the grant be made in both their names.

Consequently, the application is allowed but on condition that the pastor's wife is joined as a co-guardian of the child, the grant is made in the following terms and conditions:-

1. The applicant, **Ssemanda Mbuga Moses** and **Ssemanda Hopkins Joyce** are appointed legal guardians of the child, **Ajwang Sandra**.
2. The applicants are directed to register the order with the Registrar of Documents, Ministry of Justice and Constitutional Affairs, Kampala.
3. The applicants are permitted to travel with Ajwang Sandra to USA, for medical treatment.
4. The applicants are directed to register the order with the United States Embassy in Kampala and the Ugandan Embassy in Washington.
5. The applicants are directed to file a report regarding the state of the welfare of the child as soon as they return to Uganda.
6. The court makes no orders as to costs.

**Margaret C. Oguli Oumo**

**JUDGE**

**22/10/2010**

**Present:**

1. Nazziwa Agnes on behalf of Mr. Charles Majoli for theApplicant
2. Betty Lunkuse, court clerk
3. Nantamu Oliver, Research Assistant.