

**THE REPUBLIC OF UGANDA**

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

**FAMILY CAUSE NO. 39 OF 2010**

**AND**

**IN THE MATTER OF DAVID MEYER SEMPIJJA (INFANT)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP OF DAVID  
MEYER SEMPIJJA (AGED 1 YEAR) BY SETH WAYNE GILKESON AND ANDREA  
CASTILLE GILKESON**

**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, 1995, sections 14, 33 and 39 of the Judicature Act, Cap 13 and section 3, 4 and 5 of the Children Act Cap 59 in which the applicant is seeking for orders that:-

1. they be appointed legal guardians of David Meyer Sempijja.
2. the infant be allowed to migrate to the USA to live with Seth Wayne Gilkeson and Andrea Castille Gilkeson.
3. the infant be fully adopted in the USA and the applicants be accorded full parental rights and duties.
4. costs of this application be provided for.

The application is supported by the Statutory Declarations of the applicants dated the 1<sup>st</sup> March, 2010, the affidavits of; Kimera Rennie Suzan-the administrator of M/S Purpose Uganda Babies, Kawesi Edward-the child's biological father, Tereza Nazziwa Nalongo-the great grand mother of the infant, Kanya Sarah-the LC1 General Secretary of Katabi, Busambaga, Division A, Entebbe

Municipality, Wakiso District where the father of the infant resides all dated 1/03/2010, respectively, Barbra Nabkya-the administrator of Sanyu Babies Home dated 23/02/2010 and that of Bankusha Caroline-the Probation and Social Welfare Officer, Kampala City Council dated 1/03/2010.

The grounds of the application are;

1. That the infant was abandoned by the mother.
2. That the whereabouts of the infant's mother are unknown.
3. That the applicants wish to provide the infant with a home, parental love and care.
4. That this application is for the welfare and benefit of the child.

At the hearing of the application, the applicants were represented by Mr. Peter Nyombi and assisted by Ms. Rebecca Mugabi.

**The First issue is whether the grant is for the welfare of the infant?**

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

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

The child here is 1 year old and therefore a child within the meaning of the Act.

See the Birth Certificate of the child attached as Annexure "A" to his father's affidavit.

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

**See section 3 paragraph 1 (b) of the first Schedule to the Children Act.**

The child here was abandoned by the mother when she was about 15 days old. The father, Kawesi Edward, had no source of income to look after the infant. He handed the child to M/S Purpose Uganda Babies Home – see the admission forms attached as Annexures "C" to Kimera Rennie Suzan's affidavit. The child was subsequently committed to the care of Sanyu Babies on 9/02/10 because Purpose Uganda Babies Home has not yet been approved by the Ministry of Gender. The Care Order is attached as Annexure "B".

The infant was advertised in the Daily Monitor newspaper of 19 the February 2010 but no one has come to claim him. See Annexure “E”.

The applicants wish to be appointed legal guardians of the child in order to provide him with a home, parental love and care.

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

**The second issue is whether the applicants are suitable guardians for the child?**

Mr. Nyombi, counsel for the applicants submitted that the applicants are American citizens and notarized copies of their passports are attached to their respective Statutory Declarations and marked as Annexures “A”.

That the applicants are a married couple and notarized copies of their Marriage Certificate is attached to the second applicant’s Statutory Declaration as Annexure “B”.

Mr. Nyombi submitted that, the first applicant is a Landscaping and Excavation business man and the second applicant is a stay home mother who occasionally carries out computer consultancy work from home on a part time basis. The first applicant’s applicant employment reference letter is attached as Annexure “B” to his Statutory Declaration.

Mr. Nyombi submitted that the home of the applicants has been recommended as suitable for Adoptive purposes as evidenced by a notarized copy of the International Home Study attached as Annexure “C” to the second applicant’s Statutory Declaration.

The applicants have no Criminal Record and notarized copies of their Criminal Clearance Certificates are attached to their respective Statutory Declarations as Annexures “D” and “C”.

Mr. Nyombi contended that the applicants have never been convicted of child abuse and certificates to that effect are attached to their Statutory Declarations as Annexures “E” and “D”.

The applicants are also in good medical health and evidence to that effect is attached as Annexures “F” and “E” to their Statutory Declarations respectively.

Mr. Nyombi submitted further that section 3 of the Children Act, provides that one of the very important factors to be considered in determining issues affecting children is their welfare.

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

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

1. The applicants, Seth Wayne Gilkeson and Andrea Castille Gilkeson are appointed legal guardians of the child, David Meyer Sempijja with full parental rights and responsibilities.
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 the Country with the child so as to fulfill their parental rights and obligations under Article 34(1) and 2 of the Constitution of Uganda and section 4 and 5 of the Children Act.
6. The applicants are directed to register the order with the authority responsible for children and family welfare in Harrisonville Missouri, U.S.A and to file a report once every year with the Registrar, Family Division, High Court of Uganda at Kampala regarding the development and state of the welfare of the child and to continue to do so until the child is 18 years of age or until directed otherwise.
7. The court makes no orders as to costs.

**Margaret C. Oguli Oumo**

**JUDGE**

**26/03/2010**

Present

1. Mr. Majoli Charles holding brief for Mr. Nyombi Peter-Counsel for the respondents
2. The second applicant
3. Nalongo Nandaula-Court clerk