

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 207 OF 2010

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS LEGAL
GUARDIANS OF SAMUEL LOKWAYI (AGED 11 YEARS, 10 MONTHS) BY MICHAEL
MYLIUS AND ANGELA MYLIUS**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants, Michael Mylius ad Angela Mylius, American citizens, resident at 17802, Indigo Hills Drive, Mognolia, Texas 77355, USA, (see copy of their passports on the court record), brings this petition under the Children Act cap. 59 and the Constitution of Uganda 1995, the Judicature Act cap. 13 for orders that;

1. The Applicants be appointed Adoptive parents of Lokwayi Samuel (infant) and in the alternative, a guardianship order.

The applicants are 45 years and 27 years old, respectively.

The constitution **Article 139 (1)** gives this court powers over all matters in Uganda.

In the exercise of that jurisdiction, the High court can make such orders as are necessary in the interests of justice and prevent the abuse of court process.

See: **Section 98** of the Civil Procedure Act.

Counsel for the applicants Ms. Kawuma submitted that the Judicature Act, gives the High Court powers to give general remedies and no specific procedure has been given under the guardianship laws.

Counsel submitted that, the child, Lomoyi Samuel aged 11 and one month was born on January, 1999 to Alice Lokole and Peter Lokole, both deceased – copies of their death certificates are

annexed as “E” & “E2” to the application and the birth certificate of the infant is marked annexure “F”.

The fact of the death is also confirmed by the LC1 chairman of the area, Mr. Munyana Alfonso who informed counsel that he knew the two parents and they were dead.

The fact of death is also confirmed by the Probation and Social Welfare Officer, Jinja, who visited the home and determined the community – see report attached.

Counsel submitted that, the child is a citizen of Uganda of the Karimojong tribe, that he is a resident of Naminya LC1, Njeru Town council in Buikwe District. That he is attending Primary one in good Shepherds Nursery and Primary School.

Counsel contended that, being an orphan, he is right now under the guardianship of his brother Tom Moro.

That the tenets of the child at the moment cannot meet the tenets of his welfare as explained by the affidavit of the brother, Tom Moro that:-

1. The family is internally displaced
2. The deceased parents settled in Naminya after fleeing the cattle rustling and misuse of guns.
3. That the parents were unable to buy land because they did not have the means to do so. So they settled on Municipal Council land and after their death the land was sold to a developer, so the family had nowhere to go and as a result, the brother Tom Moro found a strip of “no-man’s” land where he built a hut (mud and wattle), where he now lives with a child.

That above this hut are heavy duty power lines distributing power from Owen Falls Dam and these wires have an impact on the child’s health.

Counsel submitted that, the brother is a laborer doing odd jobs for people around the village, earning a small meager income.

Counsel submitted that, since they live on land over which power lines are running, they may be evicted by the distribution company.

That the brother provided evidence that their parents died of tuberculosis and alcohol abuse and as an elder child, he had to treat them which depleted his savings.

That apart from poverty, the environment they live in is very poor in terms of hygiene and security and because of the economic constraints of the brother, the child could not go to School until he was eleven years.

That his education was made possible by the Tabernacle Church – a local church mission which takes in unprivileged children and looks for sponsors in Uganda and abroad and this is how the applicants got into contact with this child through their own home church in Texas and began communicating with this family by taking care of his needs. That they have paid the school fees and taken care of the child since early 2000, and they now want to formalize that relationship by fostering the child with the intentions of adopting him in the USA.

We shall first look at whether the application is for the welfare and benefit of the infant?

Under **section 3** and **Paragraph 1(b)** of the Children Act, the court in dealing with matters concerning children is enjoined to take into consideration his welfare and best interest.

In the instant case, the child is a double orphan now under the care of a brother who has no reliable source of income and permanent home. That the child is living under insecure and unhealthy conditions which have resulted in his delayed attaining the relevant development goals, thus instead of starting school at six years, the child is starting school at eleven years, which is not good for his welfare and development and court is of the view that the application if granted will be for the welfare and benefit of the child.

The second issue is where the applicants are suitable guardians for the child.

The applicants are American citizens, see copies of passports. They are married and will therefore be able to give the child a stable family environment to grow up in.

They have 3 biological children, aged 17 years to 23 years who will help the child to integrate into the family further.

The first applicant are gainfully employed as the vice president of a family business called Del Packaging Limited – copy of the employment records is attached as Annexure “D”.

The second applicant, according to counsel is a trained teacher who is ready to put in her time to tutor the child at home for some time until he is able to go to a private school as he may not get the required attention in Public schools to be able to catch up with his delayed education.

The applicants are gainfully employed and can be able to take care of the child’s needs and requirements.

Counsel submitted that, the applicants have no criminal record in the USA or elsewhere.

Consequently, the applicants are suitable adoptive parents or have been confirmed by the International Home Study which they have undergone and the report of the Probation officer, Jinja.

While the applicants do not satisfy the requirements for adoption in **section 46 (1) (a) and (b)** relating to custody for 3 years and fostering for 36 months, they do have the child’s interests at heart, and are willing and ready to cater for him, provide him a home, love and care.

Consequently, instead of granting Adoption, court sees it fit to grant a legal guardianship order in the alternative, with an option for the applicants to adopt the child in the USA, so that they can fix his residence permanently and they can be able to fulfill their rights and obligations, **under Article 34 (1) and (2)** of the constitution, **sections 3, 4, 5 and 6** of the Children Act and finally, the child can be able to benefit from entitlements due to biological adoptive children of United States citizens.

Consequently, the application is allowed by waiving the order for adoption and substituting it with guardianship in the following terms and conditions:-

1. The applicants, **Michael Mylius and Angela Mylius**, are appointed legal guardians of the child **Samuel Lokwayi**.
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 obtain a Ugandan passport for the child and renew it from time to time as required by the law.
4. The applicants are permitted to travel out of Uganda with the child in order to be able to discharge their parental rights and obligations.
5. The applicants are permitted to adopt the child in the USA, so that they can be able to fix his residence permanently so that he can have access to the benefits that accrue to biological and adoptive children of US citizens.
6. The applicants are directed to register the order with the authority responsible for family and children welfare in Houston Texas, USA and file a report once every year to the Registrar Family Division, High Court Kampala, regarding the state of the welfare and development of the child until the child is 18 years of age or until directed otherwise.
7. The court makes no order as to costs.

Margaret C. Oguli Oumo

JUDGE

27/10/2010

Present:

1. **Sheila Kagoro, holding brief for Eva Kawuma**
2. **Betty Lunkuse**
3. **Olivia Nantamu, Research Assistant**