

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
MISCELLANEOUS APPLICATION NO. 105 OF 2010
IN THE MATIER OF JOSEPH MWESIGWA (INFANT)
AND
IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS LEGAL
GUARDIANS OF JOSEPH
MWESIGWA BY TAYLOR LEE FORSBERG AND STACIE LEA FORSBERG

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO_

RULING: _

The applicants, Taylor Lee Forsberg and Stacie Lea Forsberg, bring this application under Article 34 and 139 (1) of the Constitution of Uganda 1995, sections 14, 33 and 39 of the Judicature Act cap. 13, and sections 2, 3, 4, 5, 6 and paragraph 1 (b) of the First Schedule to the Children Act, cap 59 and sections 98 of the Civil Procedure Act cap.71, for orders that;

1. The applicants be appointed legal guardians of the child, Joseph Mwesigwa.
2. The applicants be permitted to obtain a Ugandan passport for the child, for purposes of traveling out of Uganda with the child so as to fulfill their parental responsibilities.
3. The costs of the application be provided for.

The application is supported by the affidavit of the applicant dated 7th February, 2010.

The grounds of the application are briefly as follows;

- i) The child was found abandoned in Natete, Church zone, Kampala district, by unknown persons, on 28th May, 2010.
- ii) The child was handed to Natete police station which later referred the child to the Probation and social Welfare Officer at Lubaga, after failing to locate his parents and relatives.

iii) When the Probation and Social Welfare Officer failed to locate the parents, he referred the child to Open Door Uganda for care and protection.

iv) Other than the applicants, there is no one ready and willing to look after the child, Joseph Mwesigwa.

v) The child is a vulnerable child who needs parental care.

vi) That the applicants have no criminal record

vii) It is in the best interests of the child that the applicants be granted guardianship with a view to adopt him eventually.

At the hearing of the application, the applicants were represented by Mr. Isaac Mugume.

The High Court has unlimited original jurisdiction over all matters provided for under Article 139 of the Constitution 1995, and Section 14 of the Judicature Act 13.

A child has been defined under Section 2 of the Children Act as any person below 18 years of age.

In this case, the child — Joseph Mwesigwa is aged 5years and 10months, and therefore a child within the meaning of the Act. The child's age is confirmed by a copy of the birth certificate attached to the court record.

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

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

Counsel for the applicant submitted that the child was abandoned in Natete, Church zone, on 20th May, 2006. A police report to this effect, dated 30th May, 2006 is attached to the court file for record.

The Applicants' counsel submitted that the police carried out investigations to locate the parents/relatives of the child, but failed and the child was then forwarded to the Probation Officer Rubaga, who then forwarded him to Open Door Care for protection.

Counsel added that the Home was granted a Care Order to look after the child. The order is dated July, 2006 and is attached to the court record.

Mr. Mugume further submitted that the Home also tried to look for the parents/relative of the child, and on 07-04-09, put an advertisement in New Vision Newspaper but no one responded. Further, counsel submitted that on realizing that no one was taking on the child, Out Door Care approached Action for Children; an organization involved in Child's Rights and requested the said organization to find the child a home.

Counsel submitted that Open door works with Holt International which receives applications for people interested in adopting children from Africa. Further, that Holt International assessed the applicants for suitability through Emily Peters, a licensed social worker based in the USA. A copy of the home study report in which the applicants were assessed and found suitable persons for guardianships is attached on the court record.

Counsel submitted that through Holt International, the child was matched with the family of Fosberg and after that, the applicants started sponsoring the child.

It was also counsel's submission that the Probation Officer Kampala, assessed the credibility and suitability of the applicants and considered the vulnerability of the child, including his best interests and recommended the applicants to court to be appointed legal guardians since they are willing and ready to give the child a home and care. A copy of the Probation Officers' report is attached to the court file.

In view of the fact that, the child was abandoned 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 welfare and in the

best interests of the child as an institution can only give transitory care to the child and is not the best environment for the child to grow up in.

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

Counsel for the applicant submitted that, the applicants are American citizens and this is confirmed by copies of their passports attached on the court file and marked Annextures “A” and “B” respectively.

Further that the applicants are married. A copy of their marriage certificate is attached to the court record and marked Annexature “C”.

Counsel submitted that the 1st applicant is 30 years of age and the 2 applicant is 34 years of age and this is seen in the copies of their passports on the court record.

The applicants are farmers, and the First applicant is the owner of Forsberg Farm. This is confirmed by Annexature “D” on the court record.

Counsel further submitted that the applicants have one biological son - Zachary Forsberg aged 5years and an adopted daughter - Rye Lynn Forsberg aged 3 years.

In view of the above, court is of the opinion that the child will not have difficulty integrating into the applicants’ family since he is of the same age group as their child.

Mr. Mugume submitted that the applicants have no criminal record. A clearance certificate - Annexature “I” on court record confirms this.

The applicants are recommended by the Probation Officer Kampala whose report is dated 29th June, 2009 and attached to the court record.

The applicants also had medical backgrounds checks as evidenced by Annexature “J” and they have been found free from any infectious diseases which may stop them from adopting a child.

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

Counsel for the applicants submitted that in *FC 78/2009, In the Matter of Nicholas Mwanje and*

Brenda Nakidde (Children), Justice Egonda Ntende as he then was, submitted that a child's stay in an institution is only intended to be temporary and in the absence of other applicants, then an application by an International applicant should be allowed.

Further, that the child is now 6 years, an age at which he should now be transferred from a babies home to an older children's home, and that this will almost eliminate his chances of being adopted.

Counsel argued that section 58 of the Children Act sets the purpose of an approved home as transitory, not permanent, and that under section 3 of the Children Act, the welfare of the child shall be the guiding principle in making any decision under the Act.

Mr. Mugume submitted that the Probation Officer, in her report, clearly stressed that Joseph is a child in need of care and protection.

She stated that the child has been institutionalized for the better part of his life and he now needs the stability in a better home.

In view of the above, and the fact that the child has no known parents or relatives, and the applicants are ready to provide him with a home, love and care, it will be for his welfare and best interest that the applicants be granted legal guardianship. The Applicants wish to give him a permanent home, parental love and care. Therefore, it would all be for his interests that the applicants be allowed to adopt him in their own country and give him a stable home.

Consequently, the application is allowed in the following terms:

1. The applicants, **Taylor Lee Forsberg** and **Stacie Lea Forsberg** are appointed legal guardians of the child, Joseph Mwesigwa.
2. The applicants are directed to register the order with the Registrar of Documents,

Uganda Registration Services Bureau, Ministry of Justice, 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.
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 regarding the state of the welfare and development of the child to the Registrar, Family Division, High Court, Kampala 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

22/09/2010

Present

1. Mr. Isaac Mugume for the Applicants.
2. Betty Lunkuse, Court clerk
3. Nantamu Oliver, Research Assistant