

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY CAUSE NO. 273 OF 2010
IN THE MATTER OF TUMWEBAZE EMMANUEL (CHILD)
AND
IN THE MATTER OF AN APPLICATION TO BE APPOINTED LEGAL
GUARDIAN OF
TUMWEBAZE EMMANUEL BY JOHN MICHAEL HEWETT AND KIMBERLY
DAWN THOMAS HEWETT.

BEFORE: HON. MR JUSTICE B.KAINAMURA.

Application-Notice of motion-legal guardianship-article 139(1) of the constitution-section 14 of the judicature act,sections 2,3,4,5 and 6 of the children's act-Order 59 and 52 rules 1 and 3 of the civil procedure rules.

RULING

This is an application for Legal guardianship under Article 139(1) of the Constitution of the Republic of Uganda, 1995, Section 14 of the Judicature Act cap. 13, Sections 2, 3, 4, 5 and 6 of The Children Act cap. 59 and Order 52 Rules 1 & 3 of the Civil Procedure Rules SI 71-1.

The application is by Notice of Motion and seeks for Orders that:-

- a) JOHN MICHAEL HEWETT and KIMBERLY DAWN THOMAS HEWETT be appointed Legal guardians of TUMWEBAZE EMMANUEL.
- b) The applicants be allowed to immigrate with the infant to the USA where they reside so as to fulfill their parental responsibilities.

c) Costs of this application be provided for.

The application is based on the grounds that;

1. The child was abandoned and efforts to trace for his parents or relatives have proved futile.
2. The child being in need of care and protection was committed to the care of Mercy Child Care Ministry.
3. The applicants are ready and willing to immigrate with the child to the USA where they reside and provide the child with love, warmth and a healthy family environment.
4. The applicants have been found to be suitable adoptive parents by the Probation and welfare offices in their country of origin.
5. It is in the best interests of the child that the applicants be granted legal guardianship over him.

The application is supported by the affidavits of the applicants and the affidavit of Wilfred Rugumba, as well as the Report of the probation and social welfare officer of Wakiso district, all which are on court record and attest to the facts outlined hereunder;

The child – TUMWEBAZE EMMANUEL, now aged about 4years was found abandoned in Nansana West 1 Zone in Nansana Town Council by unknown persons on March 7th, 2007. The local council officials and the police then requested that the child be admitted to the care of Mercy Child Care Ministry. The child was then admitted to Mercy Child Care Ministry on the 7th March 2007. Mercy Child Care Ministry took out a Care Order on the 22nd February 2010 by which the child Tumwebaze was formally committed to the care of the Ministry vide Care Order No. 4 of 2010.

The said Ministry also made efforts to trace for the parents and relatives of the child by placing an advert in a local Newspaper (Bukedde) on the 4th November 2010, but no one has come forward to claim the child. The probation and welfare officer of Wakiso recommended that if the order is granted, it will be in the best interests and for the welfare of the child.

The applicants are adult American Citizens and they got married on the 15th June 1985 in Little Rock Arkansas.

The applicants got to know of the child-Tumwebaze Emmanuel when their son John Michael was on a missionary trip with Come Let's Dance Ministries. The said John Hewett discussed the child's situation with the applicants who felt compassion for the child and purposed to love the child as their own and become his legal guardians.

The applicants have one biological child- Dawn Michael Hewett Von Tersch aged 24years and four adopted children to wit;

- John Michael Hewett aged 23 years
- Nathaniel Shane Hewett aged 11 years
- Alexis Michaela Ranae Hewett aged 10 years and
- Hannah Joy Hewett aged 6 years.

John is employed as a counselor at People Inc. in Oklahoma and also provides general oversight and promotes a ministry called Arms of Compassion. Kimberly is a stay home mum. The applicant- John Hewett earns \$30 per hour at People Inc. and approximately \$200 - \$300 per week at Arms of Compassion. According to the Home Study Report, an adopted child would be covered on the Hewetts' health insurance.

He Home study also reveals no record of criminal history or child abuses save for an allegation and investigation of child neglect which occurred in 2002. The report however states that the applicants have since demonstrated a response that offered the highest level of protection to their children. This is demonstrated by the fact that in 2004, the applicants were granted an adoption order in respect of another child- Hannah. The applicants are free from any communicable, physical or mental impairment that could endanger the child.

The Home Study Report recommends the applicants as suitable adoptive parents of the child and states as follows,

“John and Kim have satisfactorily met the guidelines and requirements of the State of Oklahoma and heritage family Services. They appear to be emotionally and financially prepared to be parents. They demonstrate a strong marriage and a strong desire to parent another child.”

I am satisfied that the applicants on the facts available to me are suitable legal guardian of the child.

I am satisfied that it is in the infant's best interest to grant the application and accordingly, the application by John Michael Hewett and Kimberly Dawn Thomas Hewett to be appointed Legal guardians of TUMWEBAZE EMMANUEL is granted.

The appointed legal guardians are permitted to immigrate with the child to the United States of America in order to fulfill their obligations as legal guardians.

The applicants are ordered to submit a report on the state and welfare of the child to the Registrar Family Division of the High Court of Uganda at Kampala every six months until the child is 18 years old or until directed otherwise.

The applicants will pay the costs of this application.

.....

B. KAINAMURA

JUDGE

14.01.2011