

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA MISC. APPLICATION
NO.L 49 OF 2003 IN THE MATTER OF S. 16 OF THE JUDICATURE ACT 1996

AND

IN THE MATTER OF ALICIA MIREMBE ANGILLIS A MINOR

AND

IN THE MATTER OF AN APPLICATION BY RONALD AND JULIA ANGILLIS TO
BE APPOINTED LEGAL GUARDIANS OF THE SAID MINOR.

BEFORE: HON. MR. JUSTICE V. A. R. RWAMISAZI-KAGABA

R U L I N G

This is an application for guardianship brought under section 16 of the Judicature Statute, Section 101 of the Civil Procedure Act Order 48 rules 1 and 3 of the Civil Procedure Rules and provisions of the Children Statute (All the law cited is per the law before the revised Editions came in force).

The second applicant as well as the infant were in court and were represented by M/s Kiyimba - Kisaka. The application was supported by the affidavit of the second applicant. The first applicant is currently in Germany serving with the Belgian Forces, stationed there.

The facts in support of the application are that Alicia Mirembe Angillis was abandoned by its unknown mother after it was delivered at Mulago Hospital on the 17/4/2003. The applicants collected the child from Welcome Children's Centre at Jinja when it had been three months previously.

After picking it from the Centre on the 11/8/2003, the applicants have since kept Alicia under their roof and care at their residence in Kabalagala zone Makindye Division, Kampala. The first applicant is a Belgian national which the second is a Ugandan. The couple married under the Marriage Act as evidenced by Annexure JA-1. They (couple) have been recommended by the Welfare and Probation of Kampala after signing an undertaking (Annexure JA-2). The applicants have taken all the possible steps to trace the parents of the child by advertising in the media but no one has come forward to claim the child. (Annexures JA-3 and JA-4).

A guardian is defined in section 1(K) of the Children Act as a person having parental responsibility for a child and Parental responsibility in the same section 1(0) means all rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child.

The guardian may be appointed by court, by the child or the biological parents of the child. The guardianship may be granted for different reasons and purposes. It may be granted for the management of the person of the child or his property.

See: (1) Halsbury's Laws of England - 3rd Edition par 449-51

(2) Mathew vs. Brise 28 Digest Page 650

(3) Bromley on Family Law - 2nd Edition p. 365.

In all matters relating to the guardianship of a child the first and paramount consideration is its welfare. The child is defined in section 2 of the Children Act as a person below the age of eighteen years. The welfare principle is a set of rights and facilities which a child must have and enjoy during his childhood. These rights are God-given and cannot be taken away, even by the operation of the law. No law shall be enforceable against the child if such law would in effect infringe upon the child's rights enshrined in the welfare principle.

See: Article 34(1) of the Constitution.

What the welfare principle means is set out in Section 3 4 and 5 of the Children Act read together with the First Schedule thereto. Broadly they state the child's right to:

- a) stay with his or her parents or guardians
- b) education and guidance
- c) immunisation
- d) adequate diet
- e) clothing
- f) shelter and
- g) medical attention.

The welfare principle has been discussed and applied in several cases of this and outside jurisdictions but I will refer to some of them which include:-

1. McGrath (1893) 1 Ch. 143
2. In the matter of Prossy Nalungwa (infant) and Ndagire - Misc.
Application No. 500/1997

See also: Article 34 of the Constitution.

Because the child is incapable of exercising his rights due to the incapacity caused by his tender age, the law has put in place a mechanism to enable the child to have and enjoy those rights. It is with that incapacity in mind that a person who may be a parent or guardian of the child is duty-bound to avail those rights to the child under the legal duty of parental responsibility.

See (1) Sections 1(0) and 6 of the Children Act.

(2) Article 34 of the Constitution.

The child in this application is a Uganda National having been born in Uganda (chapter III Article 11(1) of the Constitution and one of the applicants is a Belgian. Where the best interest and welfare of the Child is concerned, the guardianship of the Child may be granted to a foreign national. It is better for the child to have a home and parental love and care in the hands of a foreign national than to live without any one to care for it (child). This approach was adopted in the cases of:-

1) Mirembe Sarah (Infant) Misc. Application 581992 (1992-93)

HCB 187

(1) Jane Mukasa (Infant) Misc. Application 78/1991

As pointed out, the child is a Ugandan and the second applicant has hinted that she may travel with the child to Germany to stay with her husband. Under such circumstances and before court grants the order of guardianship, it (court) must address itself to the circumstances listed in paragraph 3 of the First Schedule of the Children Act - and these are:

- a) the ascertainable wishes and feelings of the child in light of her age and understanding.
- b) the child's physical emotional and educational needs
- c) the likely effects on the child.
- d) the child's sex, background etc
- e) any harm that may result to the child
- f) the capacity of the child's parents (if any)

The facts on the ground are that there are no known parents to the child. She has lived with the applicants for the last seven months. The child is healthy, good looking and well-fed. Above all, the applicants have accepted her to be part of their family and in their home. In light of all the circumstances and facts advanced in support of the application, this court would be denying the child a chance to live and be brought up decently if it (court) were to refuse the application. This child was abandoned to die but the applicants have now given her, not only life, but a home, security and parental love, care, and responsibility.

I will therefore grant the order of guardianship, which I think, is in the best interest and welfare of the child, to the applicants.

J u d g e

22/03/2004