

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT FORT PORTAL  
MISCELLANEOUS APPLICATION No. 0004 OF 2008**

**IN THE MATTER OF THE CONSTITUTION OF UGANDA, THE JUDICATURE ACT,  
AND THE CHILDREN ACT;**

**AND**

**IN THE MATTER OF DAVID TWESIGE - AN INFANT - OF KAMENGO, FORT  
PORTAL, KABAROLE DISTRICT;**

**AND**

**IN THE MATTER OF AN APPLICATION BY DAWN PITTMAN AND DUSTIN  
PITTMAN, FOR THE LEGAL GUARDIANSHIP OF DAVID TWESIGE.**

**BEFORE THE HONOURABLE MR. JUSTICE CHIGAMOY OWINY – DOLLO**

**RULING**

Dawn and Dustin Pittman, (herein after the Applicants), nationals of the United States of America (USA), are a married couple; and residents of **601 East Park Street Olathe Kansas, 66061, USA**. They have moved this Court in an application seeking an order vesting in them, jointly, legal guardianship of one **David Twesige**; a Ugandan minor of Kamengo, Kabarole District, Uganda; and for the said David Twesige to become a member of the Applicant's family and live with them at their home in the United States of America.

Another leg of this application seeks this Court's simultaneous order authorising the Applicants to, later, pursue adoption proceedings, either in Uganda or in the USA, with regard to the said **David Twesige**. The grounds stated for this application, in paraphrase, are namely that:-

1. The said minor is in need of care and assistance that would provide for his psychological, physical, and educational needs.
2. The minor is at present, under the care of his biological mother; who lacks the means and capacity to adequately cater for the basic needs and education of the minor.
3. The Applicants are desirous of formally taking up the parental responsibility over the aforesaid minor, and to relocate the minor to the USA to live with the Applicants; so as to

effectively cater for his social, educational, psychological, and other needs; which in the present circumstance, the parent of the minor cannot afford him.

4. There is need to certify that there is no adverse claims with regard to the child; and thereby enable the applicants take the child to live with them in the U.S.A.

In support of the application is appended two affidavits sworn, separately, by Dawn Pittman, one of the applicants herein, and to which is attached a mass of supportive documents, inclusive of a report by the Probation and Social Welfare Officer of Kabarole District, recommending the grant of the order sought; and as well, the affidavit of Night Margaret, the mother of the minor in issue, giving her full support to the application, and consent to the vesting of legal guardianship of David Twesige to the applicants.

The gist of the two affidavits taken together, which expand on the grounds, stated for this application; and which were ably argued by Ms Eva Luswata Kawuma, legal counsel for the applicants, are that:-

- (a) The boy child is in need of proper care and upbringing; something which the circumstance of his socio economically single parent – the mother, Night Margaret – cannot permit him to have.
- (b) The Applicants, who have for the past five years been performing significant parental responsibility with regard to the child, and have markedly helped change the life of the child for the better, are now desirous of acquiring legal guardianship over the child, so as to afford the child even better opportunities for his future.
- (c) The Applicants have individually, and as a family, emotionally and practically prepared themselves as a family to receive the boy child into, and fully make him become part of, their family.
- (d) The mother of the boy child, a single parent, she being a widow, has given her consent and blessing to the vesting of the legal guardianship of the boy child in the Applicants. Therefore there is no adverse claim against the grant of legal guardianship sought, and for the child to relocate, and live with the Applicants in the USA.

In Court, at the hearing of the application, were: both Applicants, the boy child David Twesige, the mother of the boy – Margaret Night, and a director of Christ Aid – the church organisation that helped link the Applicants and the family of the child. I took the opportunity to establish

from the Applicants, and the mother of the child, the matters deposed to in their respective affidavits in support of this application. The boy child was evidently enthusiastic, and looked forward to the realisation of the endeavour of the Applicants as evidenced in the order sought; something, the importance of which the boy apparently appreciated.

In Uganda, the powers Courts have to grant an order for legal guardianship are provided for in the Constitution of the Republic of Uganda 1995, as amended; the Judicature Act (Cap 13); and the Children Act (Cap 59). All these aforesaid provisions of the law are principally concerned with promoting and protecting the interests or welfare of the child; and it is under the provisions of these laws that this application has been brought before this Court. The Children Act (Cap. 59) provides, in **PART II**, for the rights and welfare of the child as follows:-

**Section 3. Guiding principles.**

*The welfare principles and the children's rights set out in the First schedule to this Act shall be the guiding principles in making any decision based on this Act.*

**Section 4. Child's rights to stay with parents.**

(1) *A child is entitled to live with his or her parents or guardians.*

(2) *Subject to sub section (1), where a competent authority determines in accordance with the laws and procedures applicable that it is in the best interest of the child to separate him or her from his or her parents or parent, the best substitute care available shall be provided for the child.*

The import of this provision is that while the primary right of the child is to grow up under the tutelage of his or her parents, or parent, for the obvious reason of emotional attachment; if it is shown to the satisfaction of a competent authority, and in this case the Court, that by vesting legal guardianship of the child in the Applicants, it would serve the best interest of the child, then it would be proper for this Court to make an order removing such child from the parent.

Here the Court has to weigh the emotional loss of staying with one's parents against the opportunities that would come with the relocation away from the hands of the parents.

**Section 5. Duty to maintain a child.**

*(1) It shall be the duty of a parent, guardian or any person having custody of a child to maintain that child and, in particular, that duty gives a child the right to –*

- (a) education and guidance;*
- (b) immunisation;*
- (c) adequate diet;*
- (d) clothing;*
- (e) shelter; and*
- (f) medical attention.*

This provision of the law recognises and reiterates the natural responsibility of the parent of a child, to that child; its other importance is that it places the guardian in the same position as the parent of the child; with the duties and responsibility to promote and protect the interests of the child.

Therefore in determining whether or not to vest legal guardianship in the Applicants herein as sought, the issue of education and guidance, health care and medical attention, and shelter which the child would benefit from, vis-à-vis the situation of the child before the grant of the guardianship, are principal factors for considering such grant.

Sub section (2) of the said section 5 provides that:

*(2). Any person having the custody of a child shall protect the child from discrimination, violence, abuse and neglect.*

This Court takes cognizance of the fact that any order vesting legal guardianship of the child herein to the Applicants, with the accompanying right to relocate the child to the US, has cultural and other aspects to reckon with. Therefore the Court has to be satisfied that in the circumstance of this case, the child will not become a victim of any form of prejudice from the society he is headed for.

It is noteworthy that in the very choice of pursuing this guardianship responsibility, which only formalise what was in effect a de facto guardianship, the Applicants have manifested that they, as a family, have disabused their minds of, and crossed any prejudice based on cultural or other

barriers. It must be with a view to face such challenges that they have undergone a series of training to prepare them for the new challenge and role of parenting this child.

The First Schedule to the Children Act reiterates and elaborates on the ***‘Guiding principles in the implementation of the Act’*** and provides for the interests of the child as follows:-

**1. Welfare principle.**

*“Whenever the State, a court, a local authority or any person determines any question with respect to:-*

*(a) the upbringing of a child*

*(b) the administration of any child’s property or the application of any income arising from it,*

*the child’s welfare shall be of the paramount consideration.”*

The matter before this Court is about the upbringing of the child. There is no greater interest of the child than to be allowed or afforded, through good upbringing, to grow up and become a responsible and dependable person; well inculcated with moral values, and therefore a useful member not only to himself or family, but to society as a whole.

**2. Criteria for decisions.**

*“In determining any question relating to circumstances set out in paragraph 1(a) and (b), the court or any other person shall have regard in particular to –*

*(a) the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding;*

*(b) the child’s physical, emotional and educational needs;*

*(c) the likely effect in any changes in the child’s circumstances;*

*(d) the child’s age, sex, background and any other circumstances relevant in the matter;*

*(e) any harm that the child has suffered or is at the risk of suffering;*

*(f) where relevant, the capacity of the child’s parents, guardians or others involved in the care of the child in meeting his or her*

*needs.”*

In coming to the decision then whether in the instant case grant of the legal guardianship as applied for would be in the best interest of the child, this Court must have due regard to the factors listed above. In the instant case before me, what emerges from the evidence on record, is namely that: the child who is 16 years of age, fully appreciates that this order would cater for his physical, emotional, and educational needs, and open to him wider horizon than what he would achieve otherwise; especially since the order would afford him (the child) the right to live with the Applicants in the USA, and enable him access better opportunities there.

Such factors as the socio economic incapacity of the single parent of the child, the better capacity of the better placed Applicants, the exposure and opportunities that would await the child, and which would greatly change the circumstance of the child; are all factors which, the law provides, are decisive in determining whether or not to vest the legal guardianship as sought. The factors are to be looked at individually, but as well as a package, so as to arrive at a decision that serves the best interests of the child. The word **‘guardian’** is defined in the Children Act as follows:-

*(k) ‘guardian’ means a person having a parental responsibility for a child;*

The phrase **‘Parental responsibility’** is defined in the said Act as follows:-

*(o) ‘parental responsibility’ means all rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to a child;*

In view of the provision in the law placing the guardian in the same position as the parent of the child, this provision on parental responsibility must be read accordingly to give effect to the meaning assigned therein.

The Applicants herein have accorded the child, in the past five years, benefits which have helped transform the child to develop a sense of self confidence and hope for the future; and to own property with pride, and acquire an out look that transcends the local setting of Uganda.

Quite significantly, the Applicants have deepened, if not imbued, the culture of Christian teachings in the child, as evident from the child’s correspondences to the Applicants and their

children. There couldn't be exhibited any better evidence of the best interests of the child being catered for than is manifested above.

The case before me fits in with the observation made with approval, by Kikonyogo D.C.J; in the case of ***In the Matter of Francis Palmer (An Infant); Civil Appeal No. 32 of 2006***; and ***In the Matter of Howard Amani Little (An Infant); Civil Appeal No. 33 of 2006***; in which the learned DCJ reproduced a section of the findings of the Commissioner for Youth and Children in the Ministry of Gender, Labour, and Social Development of the Government of Uganda; contained in a report on the best interests of the child; which made an observation on Ugandan children who have been afforded the opportunity to live under the guardianship of nationals of the USA in that country; and which is relevant for the instant purpose:-

*“...the children are likely to gain than if they remained here. Similar cases have already been handled by the High Court of Uganda and the children are already in the USA doing well from the annual reports on the progress of the children sent back...The American government has very stringent regulations regarding admission of the children into the US. It is possible to follow the children through our embassy in the US.”*

The applicants herein are American nationals, domiciled in the USA; and desire that David Twesige also acquires this domicile. The High Court of Uganda has created precedents by granting legal guardianship of Ugandans to foreign nationals in several cases; see ***Miscellaneous Application No. 78 of 1991 – In the Matter of Sarah Namukasa (Infant)***; ***Miscellaneous Application no. 17 of 2003 – In the Matter of Dr Cindy Howard (Applicant)***; ***Miscellaneous Application No. 20 of 2003 – In the Matter of Ayla Mayanja (Infant)***. In each of these applications, the Court satisfied itself that the best interests of the child would be realised by the grant of the order sought.

I had the opportunity of observing and interviewing David Twesige himself, the intended beneficiary of the order sought, in Court. He is certainly enthusiastic and looks forward to being under the guardianship of the Applicants; and this not without good cause. There is a marked difference, from the pictures I saw in Court, between the boy who had just been identified by the applicants five years ago, and the one who has benefited from their intervention, and has twice travelled to the USA and sojourned with the Applicants.

It was the Applicants who first introduced the intended beneficiary to ownership of property, when they helped him acquire a goat; of which the intended beneficiary has on several occasions fondly, and with great appreciation, written to the Applicants about; giving a progress report of how the goats are reproducing and multiplying. In effect, for the past five years the Applicants have been de facto guardians of the boy child; performing parental roles over him, with enormous benefits to the child and great relief to the greatly disadvantaged and incapacitated single parent – the widowed mother.

The Applicants are a married couple with a fixed place of abode at 601, **East Park Street, Olathe Kansas, 66061, USA**. They have four biological children of their own. The evidence on record shows that David Twesige has struck a good relationship with these children from his visits there, and continued interaction with them. He has been in constant contact with the Applicants' family by means of ordinary and electronic mails (e-mails). He certainly would not be a stranger in this family, should the order sought be granted.

On the evidence therefore, I do not harbour any doubt that the grant of the order vesting legal guardianship of David Twesige to the Applicants; who have already in the past five years exercised de facto guardian ship over him, by performing parental duties; would be in the best interests of the said David Twesige. From the consent given by the mother of the boy; and the report of the Probation Officer, I am satisfied that there is no adverse claims with regard to the child which would bar the vesting of legal guardianship of the child in the Applicants; and thereby enable the Applicants take the child to live with them in the U.S.A.

I therefore grant the order vesting in the Applicants, Dawn Pittman and Dustin Pittman, jointly, the legal guardianship of David Twesige; and to exercise the right to live with the said David Twesige in the United States of America, or any other place the Applicants may be domiciled in. This grant of legal guardianship is made on the following strict terms and conditions; namely that:-

- (i) The grant of legal guardianship herein shall be in force until the child has attained the age of majority – 18 years.
- (ii) The legal guardians herein shall have the right to live with the child in the United States of America; or any other place of their domicile.

- (iii) The legal guardians herein shall avail their addresses and contact to the Registrar, High Court Fort Portal; the Probation and Welfare Officer for Kabarole District; the Ministry of Foreign Affairs Uganda, Kampala; and the Embassy of Uganda at Washington D.C. in the U.S.A.
- (iv) The legal guardians shall submit a report on the child every six months, to the officials mentioned in (iii) immediately herein above.
- (v) ChristAid Uganda shall follow up the progress of the child; and make independent periodic reports to the Registrar High Court at Fort Portal, and the District Probation and Welfare Officer Kabarole.
- (vi) The District Probation and welfare Officer, Kabarole shall make similar periodic reports to the Registrar High court Fort Portal; of his findings and information regarding the progress of the child.
- (vii) The legal guardians shall ensure that the child is accorded the opportunity to come to Uganda at least once before attaining the age of 18 years.
- (viii) Any application for the adoption of the child shall be pursued in Uganda.

The Applicants shall meet the costs of this application.

**Chigamoy Owiny – Dollo**

**RESIDENT JUDGE; FORT PORTAL**

**16 – 09 –2008**