

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

MISCELLANEOUS CAUSE NO. 37 OF 2012

IN THE MATTER OF NAMUKOSE AIDA (CHILD)

AND

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS LEGAL
GUARDIANS OF NAMUKOSE AIDA (AGED 13 YEARS) BY SELAM TECHESTE
AHDEROM AND DEBRA ANNE KAUR SINGH**

BEFORE: THE HON. LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

By this Application made under Article 139 (1) of the Constitution, section 3 and 1st Schedule to the Children's Act, section 98 C.P.A and O.52 C.P.R, the Applicants Selam Techeste Ahderom and Debra Anne Kaur Singh sought to be made Legal Guardians of one Namukose Aida a girl aged 13 years of age.

The grounds for the Application were set out in the Notice of Motion, which was supported by the Affidavits of both Applicants, and those of the parents of Aida Namukose.

The Application is based partly on natural law and affection and the need to provide basic necessities of life including education.

The Application was called for hearing on 17/10/2012 in the presence of both applicants, Aida Namukose and both her parents.

Counsel for the Applicants went through the provisions of the law under which the Application is made, and the grounds of the application. The affidavits in support of the Application were relied upon and adopted in total.

It was then submitted that Aida Namukose has been staying with the Applicants for over 2 years now and they have been providing her with basic needs.

The child is enrolled at Kilombera Home Schooling Centre, Buwenda, Jinja District, a school under the International curriculum and the Applicants are paying her tuition.

The Applicants wish to enroll the said child for higher school long distance learning in Australia their home country, and her admission is subject to proof of their having Legal Guardianship over the child.

The Probation and Welfare Officer of the District where the Applicants reside has visited their home on a number of occasions and has also interacted with the child and her parents. His report is Annexure "D" to the applicant's affidavit.

Court was assured that the parents of the child have no objection to the Application and had given their free consent and blessings thereto.

Stating that the Application is for the welfare and benefit of the child, counsel prayed that it be allowed.

In keeping with the established practice of Court, the parents of the child and the probation Officer were examined.

The mother of the child Bakiryia Judith told Court that she has 2 children. She has known the Applicants for 3 years as they reside in Jinja and she subscribes to the same faith as they do, that is the Bahai Faith. Being in the same religious community they interact often.

She confirmed that the child goes to school with the Applicants' children and the Applicants are the ones who have been paying the child's school fees. That the next level of the curriculum requires that the child should be under the Legal Guardianship of the Applicants if she is to access the curriculum.

It was pointed out that the child is not going to take on Australian citizenship and that she partly stays with the parents and also with the Applicants.

Further that the legal implications of the Application have been explained to them as parents and they have given their consent without any undue promises whatsoever being made to them.

The child also fully understands what is happening and she has no problem with the orders sought, and she would love to continue with her education.

The father of the child Kiirya Patrick confirmed what his wife had told Court emphasizing that their consent and that of the child was freely given.

On examination of the child Aida Namukose, she confidently assured Court that she is very comfortable with the arrangement being made. She already stays with the Applicants at times and would like to continue with her International education. And that she would have no problem with travelling with the Applicants outside Uganda; as she is sure she would still return home.

The Probation and Social Welfare Officer Opio Ouma, has known the Applicants since 2009. He referred Court to the report he made. It indicates that Namukose Aida lives peacefully with the Applicants and has established a loving relationship with them. The Applicants have provided a healthy, stable and loving environment to the child coupled with a strong spiritual commitment.

He has visited their home and they have discussed issues concerning fostering the child. The parents of the child have also held discussions with the probation Officer and he found out that they still share the parental responsibilities with the Applicants. The child has no problem with the Applicants and their 2 children. He recommended that the Application be allowed as the Applicants are suitable people to be appointed Legal Guardians.

In his submissions, Counsel for the applicants set out two issues to be determined by Court:

- (1) *Whether the best interests of the child are to be taken into account.*
- (2) *Whether the Applicants qualify under the law to be appointed Legal Guardians.*

In respect of the first issue, Counsel stated that, in decisions regarding children the welfare principle is paramount. He relied upon the report of the probation Officer and decisions where it has been held that **“the welfare of the child is the Courts main concern. Other factors only assist the Court ascertaining what is best for the child” – Broomleys Family Law 8th Edition.**

Indeed as pointed out by Counsel for the Applicants, it has been established by decided cases and also provided by law that **“in all decisions concerning children undertaken by any authority or person, the best interests of the child and its welfare are the paramount considerations. – See Civil Appeal No. 33/2006, Adoption Cause No. 06/96- In the Matter of Edith Nassazi (An Infant); Re: M (An infant) Adoption Cause no. 09/95 and Family Cause No. 86/11 in the Matter of Mukisa Richard (An infant).**

Refer also to Article 4 of the African Charter on the Rights and Welfare of a child; Articles 3 of the United Nations Convention on the Rights of the Child; and section 3 and the 1st schedule to the Children Act, Uganda.

In the present Application, the child Aida Namukose lives with the Applicants for purposes of attending school. The curriculum is an international one that her parents cannot afford. The Applicants have shown willingness and indeed are committed to ensuring that Namukose gets the best education. They are already providing her with other basic needs of life. And indeed they have established a loving, stable, healthy, living environment with a strong spiritual background. If Namukose is to continue with her education, it is necessary that she be under the Legal guardianship of the Applicants.

In the Bahai writings it is stated that: **“The supreme pen enjoins upon all to instruct and educate the children..... He who educates his son or any other’s child, it is as though he has educated one of My children. Upon such one be My Baha’ (Glory), My providence and My mercy which hath embraced all in the world”** – Bahai World Faith page 200.

It has been established by law that the welfare of children includes physical, emotional, educational needs and harm suffered or likely to be suffered by the child – section 3 (1) and 1st Schedule to the Children Act.

The Applicants are committed to continue providing for and seeing to the welfare of the child Aida Namukose. It is therefore in the best interests of Aida Namukose that a Legal Guardianship order issue.

As to whether the Applicants qualify for the orders sought under the law, Counsel relied upon decided cases to state that Courts have repeatedly granted Legal Guardianship orders where Applicants satisfy all the criteria required by law. He cited the case of **Debra Joyce Alitubeera C.A 70/2011** and **In the Matter of an Application for Legal Guardianship**

by Andrew Daniel Rubbens and Another, where Court held that “If there is no offer from Ugandans resident in Uganda to take up the responsibility of looking after the child, exceptional circumstances exist for the offer to be made to the Applicants, the only reliable alternative.”

It was stated by Counsel that, the parents in the present case have consented to the Application and proven that they cannot afford the best education to their daughter. While the Applicants are willing to offer the education and they are already meeting her school expenses and taking care of her; and are therefore fit to be appointed Legal Guardians. He prayed Court to allow the Application.

The Applicants in the present case are resident in Uganda. They are very well recommended by the Probation and Welfare Officer and the parents of the Aida Namukose. The two are happily married with 2 children of their own, who go to school with Namukose.

The applicants have no record of criminal history or child abuse. They share a strong spiritual bond rooted in the Baha’i Faith. The parents of Namukose Aida and Namukose herself are of the same Faith.

The two are very well educated as Doctors in Engineering and Medical Doctor respectively and are financially able to provide for the educational and other needs of their own children and that of Aida Namukose.

They are committed to providing for Aida Namukose’s education through to University **“and to guide her in conjunction with her parents in developing a positive self identity, and to grow up to be loving, spiritual, joyful and gentle”.**

I therefore find that the Applicants meet all the requirements needed to undertake the responsibilities they are seeking. Under section 46 of the Children Act, being foreigners is not a bar to obtaining orders relating to Ugandan children.

The parents of Namukose Aida have given their free consent and blessing to the Application.

There is no indication that anyone else who is Ugandan has offered to help with the international education of Namukose Aida and her parents honestly told Court that they are not in a position to meet the required expenses.

The Applicants are the only people who have exhibited a rare generosity of heart and shown willingness and commitment to provide for Namukose's international education and to offer other basic needs. It is on record that they have cared for her for over 3 years now.

Court therefore finds that for all those reasons, they are suitable persons to be appointed Legal Guardians of Aida Namukose.

Being a Legal Guardian entails responsibilities and obligations as set out under sections 4 and 5 of the Children Act. To be able to fulfil those responsibilities and obligations may require the Applicants to travel with Aida Namukose outside Uganda once in a while. They are hereby allowed to do so. This is based on the established principle that **“a Guardian should have a child in his or her charge and actually look after it..... and take whatever action may be necessary or desirable on behalf of the child.”** See **Family Cause No. 104/2011 Nakanwagi Gladys Matovu & Another (Children).**

The Application is accordingly allowed for all the reasons set out in this Ruling.

The Applicants Selam Techeste Ahderom and Debra Anne Kaur Singh are hereby appointed Legal Guardians of the child Aida Namukose.

They are permitted to travel with her outside Uganda whenever it is necessary to do so.

The order shall be registered with:

- (1) The Uganda Registration Services Bureau, Ministry of Justice and Constitutional Affairs.
- (2) The Consular Department of the Ministry of Foreign Affairs of Uganda.
- (3) The Australian Embassy in Nairobi, Kenya.
- (4) The State Agency responsible for the welfare of the children in Perth, Western Australia the Home State of the Applicants.

The Applicants to meet their own costs of the Application.

Flavia Senoga Anglin

JUDGE

23/10/12