

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**FAMILY DIVISION**  
**FAMILY CAUSE NO. 222 OF 2013**  
**IN THE MATTER OF THE CHILDREN ACT CAP 59**  
**AND**  
**IN THE MATTER OF HODKINS ANDREW (INFANT)**  
**AND**  
**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS THE LEGAL**  
**GUARDIANS OF HODKINS ANDREW (AGED 1 YEAR 6 MONTHS) BY MICHAEL**  
**WILLIAM FRIEDRICH AND DANIELLE JEAN FRIEDRICH**  
**BEFORE LADY JUSTICE PERCY NIGHT TUHAISE**

**RULING**

This is an application for legal guardianship brought by notice of motion under Articles 139(1) and 34(1) & (2) of the Constitution; sections 14, 33 and 39 of the Judicature Act, cap 13; and sections 3, 4 and 5 of the Children Act. The applicants are seeking this court's orders that:-

- a) The applicants **Michael William Friedrich** and **Danielle Jean Friedrich** be appointed legal guardians of **Hodkins Andrew**.
- b) The infant **Hodkins Andrew** be allowed to immigrate and live with **Michael William Friedrich** and **Danielle Jean Friedrich** in the United States of America and elsewhere they may live.
- c) Costs of this application be provided for.

The grounds of the application are that:-

1. The infant was abandoned by some unknown person.

2. The parents and relatives of the infant are unknown.
3. The applicants wish to provide the infant with a home, parental love and care.
4. This application is for the welfare and benefit of the infant.

The application is accompanied by statutory declarations of the two applicants **Michael William Friedrich** and **Danielle Jean Friedrich**, and affidavits of **William Edema** administrator of M/S Welcome Home Ministries Africa, **Ben Mukiibi** who found the abandoned infant, **Baguma Juliet** a police officer attached to the Child and Protection unit at Jinja Central police station, **Buhinda Sam** the Local Council (LC) 1 chairman, Old Boma parish, Jinja, and **Opio Ouma** senior probation officer, Jinja district.

The two applicants were in court when the application came up for hearing. The infant, the subject of the application was also in court. This court did not request any one to give oral testimony. However, it interacted with the applicants and the deponents who attended court at the hearing of this application. The applicants also availed court with the originals of all documents annexed to the statutory declarations and affidavits in this application, which court compared.

The facts, as deduced from the affidavit evidence before court, are as follows:-

The infant **Hodkins Andrew** was found abandoned by Ben Mukiibi on 6<sup>th</sup> May 2012 at around 9.30 pm. He was found in a drum at plot 6 Grant Road, Old Boma parish, Jinja district. He was about ten months by then. Ben Mukiibi reported the matter to Buhinda Sam the area Local Council 1 chairman. The chairman referred the matter to Jinja Central police station. The police referred the matter to the probation officer of Jinja, Opio Ouma, who recommended the infant to the care and custody of M\S Welcome Home Ministries Africa. M\S Welcome Home Ministries Africa eventually procured a care order in respect of the infant from the Family and Children's Court at Jinja vide care application no. 25 of 2013.

The applicants, who are husband and wife, learnt of the infant's plight through Monday Sydo the director of M\S Welcome Home Ministries Africa. The applicants desire to live with the infant in the United States of America (USA) and elsewhere they may live. They seek this court to appoint them legal guardians of the infant where they can provide him with a home, medical care, education and other necessities of life.

The affidavit evidence on the court record reveals that the applicants are a legally wedded couple with one child aged two years. They are adult American citizens. The applicants have been found to be fit adoptive parents by M/S Angels Haven Outreach, a nonprofit international Adoption Agency licenced in their country to carry out investigations and prepare home studies to determine the suitability of applicants as adoptive parents. Their home study report marked **D** is attached to the 1<sup>st</sup> applicant's statutory declaration.

**Michael William Friedrich** is employed as a reverse logistics manager at Nexsan Technologies, 302 Enterprise Street Suite A, Escondido CA 92029 USA, earning an annual salary of \$ 61500, as per annexure **C** to his statutory declaration. **Danielle Jean Friedrich**, is an emergency room registered nurse, Palomar Medical Centre, 2185 Citracado Parkway, Escondido CA 92029 USA, at a base hourly rate of \$46.06, as per annexure **B1** to her statutory declaration.

The applicants have no criminal records, as indicated in annexures **B2** and **E** to **Danielle Jean Friedrich's** and **Michael William Friedrich's** statutory declarations respectively. This is corroborated by at pages 6 and 7 of the International Adoption Homestudy report of M/S Angels' Haven Outreach attached as **D** to the 1<sup>st</sup> applicant's statutory declaration.

In his submissions, learned Counsel Charles Majoli for the applicants reiterated the facts and grounds of the application. Referring to the applicants' statutory declarations and the affidavits on record, he prayed this court to allow the application to enable the applicants take care of the infant. He cited **Evelyn Atukwase FC 118/2010; Re Man, an Infant SCCA 22/1994; and Family Cause No. 76/2011** to support his case.

Article 139(1) of the Constitution, together with section 14 of the Judicature Act, cap 13, give the High Court unlimited original jurisdiction in all matters. Section 98 of the Civil Procedure Act empowers the High Court to invoke its inherent powers to grant remedies where there are no specific provisions.

In all matters concerning children, the best interests of the child shall be the primary consideration. This is a legal principle contained in Article 34 of the Constitution, sections 3 and the first schedule to the Children Act, as well as various international conventions ratified by Uganda concerning the rights of children.

Section 3 of the Children Act, read with the first schedule to the same Act, sets out the criteria to be followed in applications of this nature as follows:-

- a) The ascertainable wishes and feelings of the child in light of his or her age and understanding.
- b) The child's physical, emotional and educational needs.
- c) The likely effects of any changes in the child's circumstances.
- d) The child's age, background and 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 meeting his or her needs.

I have carefully evaluated and analyzed the affidavit evidence on the court record. At the hearing, I observed the applicants, the infant and all those who supported this application. Bearing in mind the welfare principle, or the best interests of the infant, I make the following findings:-

There is ample evidence on record that the infant Hodgins Andrew is an abandoned child with no known relative to take care of him. This is evident from the affidavit evidence of Ben Mukiibi, Baguma Juliet, William Edema and Buhinda Sam. William Edema states in clause 14 of his affidavit that the infant was advertised in Bukedde newspaper of 26<sup>th</sup> April 2013 to establish whether there was a claimant, and that nobody has come up to claim the infant. A copy of the newspaper advertisement is annexed as **J** to his affidavit.

The infant is clearly in need of a home. Though he is currently under the care of M/S Welcome Home Ministries Africa, the principle as laid out in the Court of Appeal decisions - **In the Matter of Deborah Joyce Alitubeera Civil Appeal No. 70/2011** and **In the Matter of Richard Masaba Civil Appeal No. 81/2011** – is that an orphanage is a temporary residence for a child pending the availability of a suitable home in which the infant can be raised. Also see **Evelyn Atukwase FC 118/2010**.

This, in my opinion, is in line with the spirit behind sections 6 and 27 of the Children Act which, in my understanding, imply that placing a child in an institution should be a last resort after all attempts to have such child live in a suitable home have failed.

There is evidence before this court, as analyzed from the applicants' statutory declarations, that the applicants desire to avail the infant the home and care he needs at this vital stage of his growing up. The applicants stated in their sworn statutory declarations that they intend to live with the child in USA where they can provide him with a home, medical care education and other necessities of life.

The International Adoption Home Study Report of M/S Angels' Haven Outreach based on a home study of the two applicants, annexed as **D** to the 1<sup>st</sup> applicant's statutory declaration, portrays them as a stable couple, outstanding in their moral conduct, and very law abiding. They have no criminal records as indicated in the documents annexed to their sworn statutory declarations. I observed them and their interactions with the infant in court. They appeared to have picked a rapport with him.

This court is aware that though the Children Act does not specifically provide for guardianship orders, the constitutional and other statutory provisions highlighted above empower it to award guardianship orders. Section 1 of the Children Act defines "guardian" to mean a person having parental responsibility for a child.

It has been stated in previous case decisions that a guardian must be a person who is ready to place himself/herself, in relation to the child, in *loco parentis* for purposes of its care and welfare. A guardian should have the child in his/her charge and actually look after it. He/She should be able to exercise powers of control over the child. While ensuring that the physical well being of the child is cared for, a guardian should also ensure that its legal rights are protected. A guardian should be a person who can reasonably be expected to take whatever action may be necessary or desirable on behalf of an infant. See **In the matter of Nabyama Moses alias Nabyama Abasa**, Mukiibi J.

In the circumstances and the laws applicable as highlighted above, I find that the infant needs a home where he can get love, care and basic needs for his nurturing and development in life. In the absence of known relatives or other interested applicants to offer the infant such necessities of life, the applicants would be best suited to avail the same to him. At the moment, he has no place to call home. The adduced evidence reveals that the applicants meet the requirements of legal guardianship. Denying them opportunity to avail a home to the infant will deprive him the

opportunity of having the home he needs. It will result in the infant remaining in M\S Welcome Home Ministries Africa where such stay is temporary as has been stated in the cited case decisions. It will be in the infant's best interests to allow this application.

I accordingly make the following orders on terms I consider fit for the welfare of the infant:-

- a) The applicants **Michael William Friedrich** and **Danielle Jean Friedrich** be appointed legal guardians of **Hodkins Andrew**.
- b) The infant **Hodkins Andrew** be allowed to immigrate and live with **Michael William Friedrich** and **Danielle Jean Friedrich** in the United States of America (USA) and elsewhere they may live.
- c) The legal guardians are directed to obtain a Ugandan passport for the infant using his current names.
- d) The legal guardians shall submit once a year, photographs and a report on the state of health, progress and welfare of the infant to the Registrar, Family Division of the High Court of Uganda at Kampala until the child attains 18 (eighteen) years of age or until directed otherwise.
- e) The Registrar of the High Court shall furnish a copy of the orders in this ruling, together with the address of the legal guardians in USA to the Ministry of Foreign Affairs of Uganda at Kampala; the Embassy of USA in Kampala; the Ministry of Justice and Constitutional Affairs of Uganda; and M/S Angels' Haven Outreach.
- f) The legal guardians shall immediately communicate any changes of addresses to the authorities mentioned above.
- g) Costs of this application will be met by the applicants.

**Dated at Kampala this 24<sup>th</sup> day of October 2013.**

**Percy Night Tuhaise**

**Judge.**

