

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**FAMILY DIVISION**  
**FAMILY CAUSE 259 OF 2013**

**IN THE MATTER OF ARTICLES 139(1), 34(1) & (2) OF THE CONSTITUTION OF THE  
REPUBLIC OF UGANDA, AND SECTIONS 14, 33 AND 39 OF THE JUDICATURE ACT  
CAP 13**

**AND**

**SECTIONS 2, 3, 4, 5, 6 AND THE FIRST SCHEDULE OF THE CHILDREN ACT CAP 59  
AND SECTION 98 OF THE CIVIL PROCEDURE ACT AND ORDER 52 RULES 1 AND 3  
OF THE CIVIL PROCEDURE RULES**

**IN THE MATTER OF ALOZIOUS AGABA (CHILD)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY DILLION  
JAMES DALE STENGEL AND ADRIENNE MARIE STENGEL**

**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; sections 2, 3, 4, 5, 6 and the first schedule of the Children Act; section 98 of the Civil Procedure Act cap 71; and Order 51 rules 1 & 3 of the Civil Procedure Rules. The applicants are seeking the following orders:-

1. **Dillion James Dale Stengel** and **Adrienne Marie Stengel** be appointed legal guardians of the child **Alozious Agaba**.
2. The applicants be permitted to emigrate with the child to their home country to fulfill their parental responsibilities.

3. Costs of the application be provided for by the applicants.

The grounds of the application are that:-

1. The child's mother is mentally ill and as such has totally failed to look after the child.
2. The child's father is unknown and efforts to trace him have proved futile.
3. The child is now under the care and custody of Ibanda Babies Home.
4. Efforts to get a local family for the child have proved futile.
5. The child is in need of a family which only the applicants are ready to provide.
6. The applicants are financially stable, have no criminal record, have a stable family, and have been assessed and found to be capable of looking after the child.
7. It is in the best interests of the child that the application be granted.

The application is supported by the affidavits of the two applicants **Dillion James Dale Stengel** and **Adrienne Marie Stengel**, Sister Fausta Twinomugisha Administrator Ibanda Babies Home, Nyakahunde Edward LC Chairman Ngoma II village, Kururagire James maternal grandfather of the child, plus reports from the probation and social welfare officer Kamwenge district and Hedda Forquer a social worker with Across the World Adoptions.

The two applicants were in court when the application came up for hearing. The infant, the subject of the application, was also in court. Court was availed some of the originals of the documents annexed to the affidavits.

The facts, as deduced from the record, are that the child Aloysious Agaba was born to Perepetua Magezi of Ngoma II, Kanaara, Kamwenge district, on 10/10/2012. The child's mother is mentally ill and would disappear from time to time. She returned pregnant from one such disappearance but she could not state who was responsible for her pregnancy. Perepetua delivered the child in a forest from where her brothers, on being notified by the villagers, picked it and brought it home. At times Perepetua would feed the baby on solid foods and occasionally forget the child in the forest. The family eventually sought help from the LC 1

Chairman, who referred them to Kanaara police post. The police referred them to the Senior District Community Development Officer who in turn referred them to Ibanda Babies Home. The child is currently under the care and custody of Ibanda Babies Home through a care order issued by the Family and Children Court of Ibanda.

The applicants, who are husband and wife, learnt of the child's plight through Hedda Forquer, a Social Worker with Across the World Adoptions USA who had visited Ibanda Babies Home to check on their supported projects. They seek this court to grant them legal guardianship of the child to parent him.

In his submissions, learned Counsel Isaac Mugume for the applicants, reiterated the facts and grounds of the application. He submitted that it is in the best interests of the child to allow the application, based on the child's background, the eminent danger of institutionalization, plus the applicants' readiness and eligibility. He cited ***T K P & P S P by David Matthew Porter and Julie FC 14/2011; Wampamba Ben Kayemba & Nabadda Ben Lisa FC 84/2012; Clare Kemiryango V Samuel Ambrose & Another*** to support the application.

Article 139(1) of the Constitution, read 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 and the Children Act, as well as in 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. These are the ascertainable wishes and feelings of the child in light of his or her age and understanding; the child's physical, emotional and educational needs; the likely effects of any changes in the child's circumstances; the child's age, background and other circumstances relevant in the matter; any harm that the child has

suffered or is at the risk of suffering; and, where relevant, the capacity of the child's parents, guardians or others involved in meeting his or her needs.

I have carefully analyzed and evaluated the affidavit evidence on the court record. During 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 find as follows:-

There is evidence on record that the child's mother is mentally sick. She could not take care of the child because of her mental condition. The child's maternal grandfather, James Kururagire, stated on oath to this court, in addition to his sworn affidavit, that he is old and cannot look after the child. Sister Fausta Twinomugisha the administrator of Ibanda Children's Home reveals in her affidavit that nobody in the child's family has ever visited the child since his admission into the home. The same Home has also established that none of the family members is ready to take on and care for the child.

The infant is clearly in need of a family to grow in and be cared for. Ibanda Children's Home which has legal custody of the child is an institution which cannot provide a permanent home for him. The affidavit evidence on record reveals that the applicants desire to parent the child. The applicants are married to each other. They have three children aged 10, 8, and 3 years. Their youngest daughter was adopted in Rwanda in 2011. They have been found to be suitable parents by Donna Class of CCAI who conducted a home study on the applicants, as per annexure **H** to the 1<sup>st</sup> applicant's affidavit. Dillion James Dale is a manager of Environmental services at Aramark Healthcare as shown in annexure **E** to his affidavit. Adrienne Marie Stengel is a home maker.

The applicants have been cleared to parent children by the US Citizen and Immigration Services, as indicated in annexure **I** to the 1<sup>st</sup> applicant's affidavit. They are financially stable, in good and healthy condition, and have no criminal or child abuse record, as revealed in annexures **L**, **M**, **J** and **K** respectively.

The Children Act does not specifically provide for guardianship orders. However, the constitutional and other statutory provisions highlighted above empower this court 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. A guardian should be able to exercise powers of control over the child. A guardian should ensure that the physical well being of the child is cared for, and that its legal rights are protected. He/She 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 Family Cause No. 76/2011***, Mukiibi J.

In this case, I find that where the child’s biological parents are unable to care for the child, and where neither the parents nor other relatives are showing interest in the infant, the applicants are the next best suited persons to look after him. On basis of the adduced evidence, the applicants clearly meet the requirements of legal guardianship. Denying them to look after the child would deprive him the available opportunity of being in a home where he is loved and parented. This is a proper case where, through a guardianship order, the child will get a home, love, care and basic needs for his nurturing and development in life which he is currently enjoying at a children’s home. It will be in his best interests to allow this application if he is to enjoy the said basic needs permanently in the course of his growing up.

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

- a) Legal guardianship of **Aloyzious Agaba** be granted to the applicants **Dillion James Dale Stengel** and **Adrienne Marie Stengel**.
- b) The legal guardians are directed to obtain a Ugandan passport for the child using his current names.

- c) The legal guardians shall submit once a year, photographs and a report on the state of health, progress and welfare of the child to the Registrar, Family Division of the High Court of Uganda at Kampala, and the Community Development Officer, Kanaara sub county local government office until he attains 18 (eighteen) years of age or until directed otherwise.
- d) 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 Donna Class of CCAI.
- e) The legal guardians shall immediately communicate any changes of addresses to the authorities mentioned above.
- f) Costs of this application will be met by the applicants.

**Dated at Kampala this 2<sup>nd</sup> day of December 2013.**

**Percy Night Tuhaise**

**Judge.**