

REPUBLIC OF UGANDA  
HIGH COURT {FAMILY DIVISION}  
HOLDEN AT KAMPALA  
FAMILY CAUSE NO.28 OF 2014

**IN THE MATTER OF ARTICLES 139(1), 34(1) & (2) OF THE CONSTITUTION OF THE  
REPUBLIC OF UGANDA AND SECTIONS 14, 33 AND 49 OF THE JUDICATURE ACT**

**AND**

**SECTIONS 2, 3, 4, 5, 6 AND THE FIRST SCHEDULE TO 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 ANDREW KINTU :::AN INFANT**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY TANNER  
SCOTT SOGGE AND AMANDA LEE SOGGE::: APPLICANTS**

**BEFORE HONOURABLE LADY JUSTICE CATHERINE BAMUGEMEREIRE**

**RULING**

This is an Application for Legal Guardianship of the Child Andrew Kintu brought under Articles 139 (1), 34(1) and (2) of the Constitution of the Republic of Uganda 1995, Sections, 14, 33 and 39 of the Judicature Act CAP 13, Section 98 of the Civil Procedure Act CAP 71, The Application is also brought under sections 2,3,4,5 and 6 of the Children Act CAP 59 and Order 52 rules 1 and 3 of the Civil Procedure Rules SI 71-1. The Application is supported by at least eight affidavits, a social welfare report and a Home Study report.

In the above application, the Applicants prayed for orders that this Honourable Court appoints them guardians of the child Andrew Kintu and further that this Court permits them to travel with the said child to the United States of America in order to complete the adoption process in the United States of America. The applicants further pray that costs of this application be provided for.

The stated grounds upon which this application is based are that

1. The Child Andrew Kintu was abandoned on or about the 2<sup>nd</sup> Day of June 2013 in a taxi at Nateete –Wakaliga stage
2. The child’s abandonment was reported to the Central Police Sation and a case opened vide Ref SD 32/02/06/2013
3. The Police referred the child to Nsambya babies’ Home for care and custody

4. All efforts to trace the child's relatives have been futile
5. Andrew Kintu is a child in need of a permanent home, parental love, care and protection
6. Besides the applicants, no one else known to this Court has expressed the desire to provide Andrew Kintu with a permanent home, parental love, care and protection.
7. It is in the best interest of the child that this honourable Court be pleased to grant this application

There are three issues raised in this application:

1. Whether the grant of this application is in the best interest of the child?
2. Whether the applicants are suitable guardians of the child, Andre Kintu?
3. Whether adoption can be completed in the United States of America?

In inquiring into the first issue, this Court looks at the background and the current welfare of the minor in question, Andrew Kintu:

Counsel relied on The Convention on the Protection of Children and Co-operation in Respect of Inter Country Adoption. Article 1 of the CPCCRICA states that one of the objectives of the Convention is to establish safe guards to ensure that inter country adoptions take place in the best interest of the child. Similarly Counsel also referred to the International (United Nations) Convention on the Rights of the Child. Art 3(1) of the e UN Convention of the Rights of the Child obliges national legislative bodies, among others, to make the best interest of the child a primary consideration in all its actions concerning children.

Am in agreement with Counsel for the Applicants Regarding the above two UN Convections.

Counsel referred to some international conventions on the rights of children and to Ugandan case law particularly the case of In re M (An Infant) Adoption Cause No. 9 of 1995 .

On the whole am agreeable to the decision in Re M (supra) in so far as it touches upon the overriding principle that whatever decision is made must be in the best interest of the child. Further I do agree that indeed in cases regarding children, the best interest of the child is paramount. The authority is however distinguishable on law and facts. It is based on adoption rather than legal guardianship. Additionally the adoption issues in referred to in Re M are not archetypal. Unlike legal guardianship, the conditions to be fulfilled for Adoption are clearly defined under the Children Act Cap 59 and the rules made there under. The situation with legal guardianship is that it is distinguishable because there is no law and there are no rules that govern it. This is the reason these applications are brought under Article 139 of the Constitution and Sections 14, 33, 39 of the Judicature Act and Section 98 of the Civil Procedure Act. The law grants the High Court mandate to invoke its inherent and unlimited jurisdiction.

1. In response to issue number one this Court has to ask whether the grant of this application is in the best interest of the child?

In order to interrogate this issue Court looked at the background of the child to see whether he was a child in need of care and protection and to assess whether his current position is the best option now and in the future and finally whether the offer for legal guardianship is a better alternative.

### **The background of the infant Andrew Kintu:**

The child Andrew Kintu has an estimated birth date of 6<sup>th</sup> April 2014. The birth is estimated due to lack of better information regarding the birth or parentage of the infant. A witness, Twaha Ssevume told this Court that the child was abandoned inside a taxi at the Nateete-Wakaliga Stage in the Old Taxi Park in Kampala City by a female passenger whose whereabouts remain unknown. The stage manager and taxi driver, Joseph Buule took this child to the Mini Price Bata Police post but was referred to the Central Kampala Police Station. The Police referred the child to Nsambya Babies' home. Efforts were made to trace the whereabouts of the infant's parents or relatives, in vain. Radio announcement, on CBS Radio (in Kampala, Uganda) and newspaper adverts in Bukedde Newspaper yielded no positive result.

Cases involving abandoned children are sensitive since the Court has to rely on third parties to prove that indeed the said infant was abandoned. Moreover the child is too young to speak for himself. In this case Court was able to examine all the persons who were involved in the discovery of the abandoned baby from the moment he was sighted abandoned in the taxi to his custody at Nsambya Babies Home. The chain of evidence was not broken and the witnesses seemed truly indifferent bystanders who were caught up in this story. They appeared to give spontaneous accounts of what happened on the day the child was abandoned. The taxi touts and stage coach manager struck me as having been slightly inconvenienced by the situation they were embroiled in. This appeared to corroborate the story that indeed this child was abandoned.

The predicament of this child is clear evidence that this is a child in need of a loving and caring home. It is double jeopardy for a child who is abandoned to then become institutionalised. An application for legal guardianship which promises such a child a stable home is one Court would consider being in the best interest of the child.

### **2. Question then is whether the applicants are suitable guardians of the child, Andre Kintu?**

Tanner Scott Sogge is a 30 year old American male and resident of 4105, Pleasant Drive, Rapid City in South Dakota USA. He is holder of passport 50662970 expiring on 6<sup>th</sup> March 2023. He is a welder

fabricator at the All Metal Manufacturing. He was married to Amanda Lee Sogge on 1 July 2006. The couple have two biological children namely Sullivan Lee Sogge,<sup>7</sup> and Hendrik Tanner Sogge, 5. His desire to have legal custody of Andrew Kintu is based on his desire to provide a loving home and family to a child in need of one.

The couple reside in a two storey home with a main level comprised of two bedrooms, kitchen, eating area, living room and bathroom and an upstairs level comprising of a master bedroom and loft area. The basement comprises of a family room, laundry room, bathroom, utility area and bedroom.

The second Applicant Amanda Lee Sogge is thirty years old and primarily a homemaker. She works part time as a hair stylist at Tangled Tresses and also runs a coffee delivery business. She informed this Court that she works part time on two afternoons a week. She has her work schedules arranged such that she does not need outside child care. On Thursday afternoons, for instance, leaves the children in the care of Tanner while on Fridays, Tanner's mum who lives nearby, baby sits for them. She stated that they began considering adoption over six years ago and would like to make a difference in the life of a child who needs a family. They learnt about this child and another through Bethany Christian Services, a licensed child placing agency in the US. They have gone through counselling, assessments, document verifications and interviews through the said Bethany Christian Services.

Amanda stated that she had a happy, secure, fun and exciting childhood and intends to provide the same to Andrew Kintu if this Court grants her legal custody of the said minor. She further told this court that intend to put Andrew Kintu through the same schools their children go to and will provide for him till he enters a university of his choice.

A Home Study was undertaken by the said Bethany Christian Services and their report is attached to the affidavit of Tanner Scott. The couple has the experience of raising children since they are raising the above mentioned biological children. The couple come well recommended and is said to exceptional and outstanding parents to their two children.

I do agree with counsel for the applicants that applicants proved that they appear to have the means sufficient to provide Andrew Kintu with a home and to meet his needs as growing child. I find the applicants are suitable guardians.

. In reaching this decision I have also relied on the cases of Howard Amani Little (an Infant) and Mrs Rebecca Little and that of Francis Palmer (an Infant) and Mrs Michelle Louise Palmer Civil appeals 33 and 32 of 2006 where it was held that the Applicants though citizens of the US accepted to the take care of the infants and were willing to provide for them a home thus saving the infants from getting

institutionalised in the children's homes. Further in R Michael (An Infant and Morse Richard Paterson and Prickett Teresa Renee Family Cause no. 72 of 2009(Family Division) the Applicants who were aliens were granted an order of guardianship in respect of M an infant who was found abandoned at Jinja Taxi Park by unknown persons. Similarly in Re Mary Gimono an Infant and Jimmy Wayne Renslow and Gayla Deonne Renslow guardianship was handed to foreign nationals because it would present an opportunity for the infant to grow up in a loving family environment provided by the applicants and further that there was no offer from a local family to take care of this infant and provide a home for him here.

The regarding the last issue whether the applicants should be allowed to travel with the infant to the United States in order to complete adoption processes there:

in the Matter of Deborah Joyce Alitubeera and Andrew Daniel Ribbens and Sarah Anne Shepard Ribbens No. 70 of 2011 and in the Matter of Richard Masaba and Matthew John Zimmerman and Audrey Finhane Green Zimmerman 81 Of 2011

it was held that the most important consideration in cases regarding children is that the best interests of the child is taken into consideration. In Miscellanoeous Application No. 38 of 2012 made subsequent upon the above appealed specifically permitted the foreign applicants to travel with the children to the United States in order to complete their adoption processes in the United States. The Court of Appeal expressed a unanimous view that the intention of the earlier Judgments in 70 and 81 of 2011 would not be fully realized unless the Court struck out the condition which required legal guardians to return to Uganda and to complete the adoption process here. I could not agree more.

I find this a proper case for the applicants to travel with the minor to the United States and to complete the adoption process in their country if residence.

Consequently, having decided the is a child in dire need of care and protection and having critically examined and found that the applicants are suitable persons to be granted legal guardian this court now orders as follows:

1. The applicants, Tanner Scott Sogge and Amanda Lee Sogge are hereby given legal guardianship of the aforementioned infant until the infant attains the age of 18years or until other lawful orders:
2. Additionally this Court permits the applicants Tanner Scott Sogge and Amanda Lee Sogg to travel with the infant to the United States of America where the said applicants are normally resident and also where they are gainfully employed.

3. This Court Further orders that the applicants, Tanner Scott Sogge and Amanda Lee Sogge make a return visit with the child to Uganda every five years

Although the following were not prayed for, I find that it is in the best interest of the Infant to further order that:

4. The Applicants are directed to ensure that the infants retain their Uganda citizenship in addition to any other citizenship he may acquire
5. The above said Applicants are directed to submit progressive reports of the child every six months to the Probation and Welfare Officer of Kampala Capital City Authority, to the Registrar of the Family Division of the High Court of Uganda; to the Chief Registrar of the Courts of Judicature and to the Ugandan.
6. The Applicants are ordered to return the infant to Uganda and produce him before the Registrar of the Family Division every five years until they attain the age of 18years.
7. The Applicants must deposit with this Court all manner of address including physical address, email addresses, phone numbers home, office and mobile
8. Any change of Address or change of circumstances of the Applicants must be immediately communicated to the Probation and Welfare Officers of Kampala Capital City Authority, to the Registrar of the Family Division of the High Court of Uganda; to the Chief Registrar of the Courts of Judicature, to the Ugandan Embassy in the United States.

It is so ordered.

Catherine Bamugemereire

Judge

11 February 2014

Ruling read in the Presence of Victoria Katamba Counsel for the Applicants.

Catherine Bamugemereire

Judge

11 February 2014

