

THE REPUBLIC OF UGANDA

HIGH COURT

FAMILY DIVISION

FAMILY CAUSE No. 020 of 2013

IN THE MATTER OF SECTIONS 2, 3,4,5,6 OF THE CHILDREN ACT CAP 59, LAWS OF UGANDA

AND

IN THE MATTER OF Elizabeth Namubi  
.....A MINOR

AND

IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY Arjan Christiaan Brands and Martine Weisseneker Brands.....APPLICANTS

FAMILY CAUSE No. 023 of 2013

IN THE MATTER OF SECTIONS 2, 3,4,5,6 OF THE CHILDREN ACT CAP 59, LAWS OF UGANDA

AND

IN THE MATTER OF JUMA RAYMOND.....A MINOR

AND

IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY Arjan  
Christiaan Brands and Martine Weisseneker Brands.....APPLICANTS

**BEFORE HONOURABLE LADY JUSTICE CATHERINE BAMUGEMEREIRE**

**BEFORE HONOURABLE LADY JUSTICE CATHERINE BAMUGEMEREIRE**

### Ruling

This is an application for Legal Guardianship brought by way of notice of motion and supported by the statutory declarations of Arjan Christiaan Brands, Martine Wiesenekker Brands and the six affidavits of William Edema, Shamirah Namuli, Mwandah Fatumah, Farida Namutebi, Hakil Kirigwa and Ouma Opio. A statutory declaration is a written statement that a person signs and declares to be true and correct before an authorised witness. By signing it, the person agrees that the information in it is true, and the person can be charged with perjury if the information is false. To all intents and purposes there is hardly a difference between an affidavit and a statutory declaration.

This Court notes from the outset that this Application is a consolidation of two applications to wit Family Causes No 20 and No 23 of 2013. Both are applications for legal guardianship brought by the two respective Applicants in respect of two Ugandan children namely Elizabeth Namubi, 6years and Abdurrahman Juma Raymond, 4years. Both children are wards of Welcome Home Ministries in Jinja. The consolidation is made under O XI rule 1(a) of the CPR Cap 71-1.

The rule states as follows:

1. *“Where two or more suits are pending in the same Court in which the same or similar questions of law or fact are involved, the Court may, upon the application of one of the parties or of its own motion, at its discretion, and upon such terms as may seem fit-*

*a. Order such a consolidation of those suits.”*

Upon close scrutiny of the facts, the issues and the law in the two applications, this Court found that the save for the difference in detail regarding the minors in question, these were twin applications on selfsame matters. The applicants in both Applications were the same married couple, Arjan Christiaan Brand and Martine Wiesenekker Brands. Save for slight variations in their backgrounds, the two infants were in dire need of care and protection and were both taken into care by Welcome Home Ministries Africa in the first six months of their infancy. This Court also found that the issues before it were peas of the same pod and any attempt to try them apart would lead to unnecessary duplication of causes. Consequently, this Court, in spite of the wishes of Counsel, decided that it was better in the best interest of the minors, for better dispensation of justice and for good case management to have the two applications consolidated. This course of action is informed by OXI rule I (a).

The first Applicant, Arjan Christiaan Brands aged 38 is an Electrical Technician employed by a Technical Installation Company, J. Bijlard BV in Hilversum. He is a Dutch National and resident of Marconistraat 6, 1276 ET Huizen, The Netherlands. He is married to the second Applicant Martine Wiesenekker Brands aged 36years, a Nurse with Tergooiziekenhuizen. This Court found that the two Applicants have been married since 5<sup>th</sup> October 2000 although their thirteen years of marriage had so far not resulted into biological children of their own. Between them the two applicants had an annual income of approximately seventy five thousand Euros (75,000). The two applicants came highly recommended and are appeared seized of the means to care for an expanded family. A Home Study report revealed that the Brands lived in what was called a single storey house but which this Court on closer scrutiny found to look like a terraced townhouse in a residential area with sufficient facilities to accommodate two children of opposite sexes. Further that the applicants had no criminal backgrounds. Separate certificates of behaviour were issued in that regard by the Ministry of Justice in The Hague which stated that the Minister of Justice had conducted an investigation into the behaviour of each of the two applicants and that no objections against each of them had resulted from the investigation. Each of the two applicants was also screened and found to be in excellent physical and mental health and free of infectious diseases and quite able to raise a child.

Further, the second applicant appeared to have taken time to learn about the daily care of children of African descent, which skin care markedly differs from the care of persons of Caucasian descent. Both Applicants stated that their community back home was open to the idea of them taking in children of a different race.

It was further found that for this couple religion plays a pivotal role in the way they live their daily lives. This Court examined each of them and found that they long to adopt and look after the children as though they were they were biological children. This court inquired into how they came to learn about the two infants. It was at this point that they mentioned their interaction with Welcome Home Ministries Africa. This court decided that it was not sufficient to simply rely on affidavits and called the manager of Welcome trust who was present.

Court examined William Edema the Director of Welcome Home Ministries on the assertions in his affidavit. He stated that Welcome Trust had outreach centres in the Jinja area and looks after children in need of care and protection. He further stated that had been with Welcome Home Ministries since 1998. He further stated that the two minors in respect of this application were his wards. In addition he told Court that so far he has fifty six children in residence. Edema additionally stated that as an organisation they did not get many Ugandans interested in taking legal custody of children in need of care and protection. On the contrary they have many foreign nationals interested in legal guardianship of these children. He further stated that many of these children come from needy backgrounds and are without care and protection when he finds them. Indeed the backgrounds of the two infants in this consolidated application attest to that fact. Court heard that one Jacqueline Hoskin was founder of Welcome Home Ministries but passed away and another Sydo Mandy took over the organisation and under her leadership, many of the extremely needy Ugandan children have found homes overseas especially in Europe and North America. Court further heard that in order to keep in touch with the progress of these children, the said Sydo Mandy makes annual visits to the Netherlands to check on the children taken into custody

by Dutch Nationals. It is of interest to this Court make a mention of and note that where an opportunity to supervise applicants exists, a Ugandan official should attend such a gathering and a report of the proceedings be made available to relevant Government organs. The two infants in this Application, Elizabeth Namubi and Raymond Juma are two Ugandan children that Welcome Trust has recently singled out as children in need of inter country guardianship. Who are these two infants? We shall start with Elizabeth Namubi.

Elizabeth Namubi, 6yrs, is a double orphan born to one Robina Kyakuwaire and Robert Namasoko, both deceased. The death certificates of the parents are duly attached. Her paternal and maternal grandmothers were both present to testify that her parents passed on. Namubi was left in the care of Margaret Nafuna; her paternal grandma who did her best but found that she could not take care of the infant. When asked whether she consents to the application Margaret stated that if the child was left here in Uganda under her care she may fall prey to the ills of disadvantaged youth such as early pregnancies. Her maternal grandma could not even attempt to try to look after the minor since the child's late mother left her other children to look after.

Abdurrahman Juma Raymond may not have been an orphan but his father is unknown and the mother is unable to take care of him. The mother, one Shamila Namuli gave birth at age seventeen. Her already overburdened mother was unable to take on another child and Shamila herself is up till now not capable of caring for the infant. Indeed an advert was placed in a national newspaper soliciting for the whereabouts of his dad. There was no response to the advertisement.

The twin issues in both applications before this Court were:

1. Whether the Application is made in the best interest of the children?
2. Whether the Applicants are suitable guardians of children?

In Applications of this nature, the Court is guided by the welfare principle. The welfare principle requires that only what is in best interest of the child is taken into account when Court reaches a decision regarding the child. This is provided for

in S.3 of the Children Act and in the First Schedule to the Children Act state as follows:

**3. 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 effects of 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.

It is thus imperative that in all decision regarding the child, his desires and opinion, age, sex, racial and social background, physical, emotional and health needs among others, must be taken into consideration.

In this case, it is a finding of fact that Elizabeth Namubi is a double orphan in need of care and protection while Abdurrahman Juma is a child in dire need of care and protection. The two children were admitted into care quite early in their lives, both before their first birthday, evidence that the parents or relatives could not cop. While the two infants suffered dire need the two Applicants Arjan Christian Brand and Martine Wisenneker Brands on the other hand have longed to care for children they could call their own. I examined the Applicants and they appear to be ready, able and willing to offer the children care protection and a home. Further the Applicants appeared to come from quite stable backgrounds with both their parents still living and still married. Sadly this Court found that no Ugandan had shown interest in caring, fostering or adopting any of the two children. In the circumstances it is in the best interest of the children that they are taken into the legal custody of a couple who promise a future better than what Margaret Nafuna predicted for her grandchild. Nafuna stated rather starkly that

the only future she could foresee for her grandchild here was poverty and early pregnancy.

The story of Shamila Namuli was not any different. Her teenage pregnancy led to the birth of Abdurrahman Juma Raymond, the minor. The putative father, an alien, vanished never to be seen again. Both Shamila and her mother felt that the child, Raymond might better off with the Applicants. Shamila is an unemployed young woman. The only thing she could offer her son was the love of a mother yet in the face of unemployment, hunger and starvation; she appeared to fall short even of the motherly love and affection. The child who was in dire need of care has found a couple willing to offer more than parental love and care. The mother conceded that the child was better off with the applicants.

The Court of Appeal in the Matters of Deborah Joyce Alitubeera and Andrew Daniel Ribbens and Sarah Anne Shepard Ribbens No. 70 of 2011 and Richard Masaba and Matthew John Zimmerman and Audrey Finhane Green Zimmerman 81 Of 2011 it was held that the welfare of the children would be catered for by the applicants.

I do agree that given the dire need of the children on the one hand and the circumstances of the applicants on the other, the two children will be better off in the care of the two applicants than they would if were left in institutionalised care such as Welcome Home Ministries. See the cases of Ayla Mayanja and Infant and Griet Onsea Miscellaneous Application No. 20 of 2003 and in Mary Gimono Mirembe in Family Cause No. 25 of 2009 where it was held that what is needed for the infant was being provided an opportunity to grow up in a loving family environment. I equally find the case of Michael an infant and Morse Richard Patterson Jr and Pricket Teresa Renee Family Cause no. 72 of 2009 persuasive. Clearly institutionalised care is not the best option for children and where possible children need to be removed from such care. The only reason such a child or children would continue to be institutionalised is where it is the second best option. A stable family situation gives the child the best start in life.

The applicants want to give children love; the children yearn to receive parental love. This Court would not be acting in the best interest of the children to deny both parties the opportunity to give and to receive love and a possibility for a good start in life for both infants.

In the circumstances therefore, this Court orders as follows:

1. The applicants, Arjan Christiaan Brands and Martine Wiesenneker Brands of Marconistraat 6, 1276 ET Huizen, The Netherlands are hereby appointed legal guardians of Elizabeth Namubi the aforementioned infant until the infant attains the age of 18years or until other lawful orders:
2. This Court permits the applicants, Arjan Christiaan Brands and Martine Wiesenneker Brands of Marconistraat 6, 1276 ET Huizen, to travel with the infant to The Netherlands where the said applicants are normally resident, will be able to exercise the responsibilities of parentage and also where they are gainfully employed.

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

3. The Applicants shall ensure that the infants retain their Uganda citizenship in addition to any other citizenship they may acquire in due course.
4. The above said Applicants shall submit progressive reports of the child every six months to the Probation and Welfare Officer of Buikwe and of Jinja Districts, to the Registrar of the Family Division of the High Court of Uganda; to Welcome Home Ministries Jinja; to the Chief Registrar of the Courts of Judicature and to the Ugandan Embassy in the Netherlands.
5. The Applicants shall return the infants to Uganda and produce them before the Registrar of the Family Division every five years until they attain the age of 18years.



6. The Applicants must deposit with this Court all manner of address including physical address, email addresses, phone numbers home, office and mobile
7. Any change of Address or change of circumstances of the Applicants must be immediately communicated to the Probation and Welfare Officers of Buikwe and of Jinja Districts respectively, 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 Netherlands.

It is so ordered.  
Catherine Bamugemereire  
Judge

Ruling Delivered in Open Court in the Presence of Majoli counsel for both applicants.

Catherine Bamugemereire  
Judge  
21/Feb/2014