

THE REPUBLIC OF UGANDA
HIGH COURT {FAMILY DIVISION}
FAMILY CAUSE NO. 327 OF 2013
IN THE MATTER OF TIMOTHY TUMWEBAZE {AN INFANT}
AND
IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDINSHIP BY
RAEGAN ANNE MALLANEY GYORFFY
AND
MICHAEL JOSEPH GYORFFY

BEFORE HON. JUSTICE CATHERINE BAMUGEMEREIRE

RULING

This is an application for legal guardianship brought under the provisions of Article 139 (1) of the Constitution, Section 14 of the Judicature Act and Sections 2,3,4,5 and 6 of the Children Act Cap 59 and Order 52 Rule 1 and 3 of the CPR SI (71-3).

The Applicants seek for orders that:

1. Raegan Mallaney Gyorffy and Michael Gyorffy be appointed Legal Guardians of the infant Timothy Tumwebaze with full parental rights and responsibilities.
2. That the said Applicants be permitted to obtain a passport for the infant and to immigrate with the infant to the USA where they are resident in order to fulfill their parental responsibilities.

The grounds for this application are fully set out in the statutory declarations of Raegan Anne Mallaney Gyorffy and Michael Joseph Gyorffy, the applicants and six affidavits of Prossy Namulinda Hamirie, the Administrator Noah's Ark Children's Home, Hassan Wesonga, LCI Chairman Mawero East, Busia Municipality, Sarah Ibrahim and Bena Nekesa, the two persons who picked up the abandoned child, Josephine Akello, the Officer in Charge Children and Family Unit Protection, Julius Ogallo, the Senior Probation and Social Welfare Officer, Busia District.

There are two issues raised in this Application:

1. Whether the application for legal guardianship is in interest of the welfare and benefit of the infant.
2. Whether the Applicants are suitable guardians for the infant

The infant Timothy Tumwebaze was abandoned when he was approximately six months old. Two women walking in an alley way stumbled upon the infant.

The Evidence of Sarah Ibrahim, a local council member of Mawero East B North Parish, Eastern Division in Busia Municipality sums up the manner in which the child was found.

“On 6th Feb 2012 I was with Nekesa Bena. We were on the way to the village LC meeting. I moved about a kilometre and I saw a child thrown on the rubbish heap. The child was left on the rubbish heap and was crying. We picked the child and walked with him to the LC meeting which took place that evening. We informed the LC1 and he called everyone. He said I should try to find the family but I failed. The baby spent a night at my home and took him to the police first thing in the morning. They (the Police) took my statement and gave me a letter to the probation officer. I was given a letter to Probation and Social Welfare Officer. He said he could not help yet so I returned home with the child. The following day I returned to PASW and it was the day after that I was given permission and I took the child to Noah’s Ark. I have seen the child since. Noah’ Ark is in Busia... I got a report from Noah’s Ark that the child had found parents. ...I ... thank God for his mercy. ”

Sarah Ibrahim whose verbatim evidence appears above triggered the process which got the LCs, Police, Social Welfare and the Noah’s Ark Children’s home involved. The letter from the LC1 Chairman, Hassan Wesonga, Mawero East B dated 6th Feb. 2012 forwarding the infant’s case to the Police Child and Family Protection Unit stated as follows.

“This is to forward to you Sarah Ibrahim and Benna Nekesa, LCI Officials from the above named village who brought it to the attention of our office of LCI that a six month old male child was found abandoned. This unfortunate incident happened on 6th . Feb. 2012.

Therefore, since we don’t have the ability to care for the child we here by forward to you for further management.

Yours in Service

Wesonga Hassan

C/Man LCI

c.c Probation and social Welfare Officer Busia District

The processes the child went through after he was picked are well documented. From the LCI the Police Child and Family Unit got involved. The Police Officer in charge of the Child and Family Unit Busia Central Police Station, AIP Josephine Akello, stated that on 6th February she received a letter from the LCI Chair man of Mawero East B, North Parish, Eastern Division, Busia Municipality forwarding the matter of an abandoned child and requesting assistance towards the issue. She in turn forwarded the matter to the District Probation Officer who then authorised the handing over of the child to Noah's Ark Children's Home. The officer believed that an application for legal guardianship was in the best interest of the child since it would provide the child with a home where he would be accorded parental care and love. A true copy letter of AIP Josephine Akello's hand-written letter to the District Probation Officer went as follows:

**Busia Police Station
Child and Family Protection Unit
7th |02|2012**

**The District Probation Officer
Busia District
P.O.Box 124
BUSIA**

Sir,

RE: ABANDONED CHILD VIDE SD 30/7/2|12

This is to introduce Sarah Ibrahim an LCI official and member of Child protection committee Mawero East B and Nekesa Bena who is a resident of the same village who reported with a child of about six months abandoned in their village.

The purpose of this letter is to forwards them for better management of this child's welfare.

Your cooperation is highly appreciated.

Signed:

OC CIPU Busia

The Senior Probation and Social welfare Officer, Mr. Julius Ogallo in his Affidavit stated that the Child was named by the orphanage as Timothy Tumwebaze, He further stated that the parents of the infant are unknown. He further stated that the Probation and Social Welfare office wrote to the Magistrate Grade II of Busia recommending that the child be committed to the care of Noah's Ark children's Home. He further stated that on 23rd August 2012 the child was committed to the care of Noah's Ark Children's Home. A copy of the Care Order was attached to the application and marked E. He further stated that since the child was handed to Noah's Ark, He further stated that no one had come claiming the child. No relative had been found. The Probation and social welfare officer stated that the child stands to benefit from the applicants who will provide him with a home, parental love, care and necessities of life.

In submitting on the issue whether the application for legal guardianship is for of the welfare and benefit of the infant Mr. Charles Majoli assisted by Ms Agnes Nazziwa relied on the cases of Francis Palmer (an Infant) and Mrs Michelle Louise Palmer and that of Howard Amani Little (an Infant) and Mrs Rebecca Little Civil appeals 33 and 32 of 2006 where the Court of Appeal Ruled that the orders sought were essential for the welfare of the infants and would be in their best interest. Further that the disability of an infant and his legal capacity to manage his affairs rendered it essential to give him protection of his or her person. Counsel further referred to In the Matter of Deborah Alitubeera and In the Matter of Richard Masaaba Civil Appeals No. 70 and 71 of 2011. He further referred to Evelyn Atukwase Brianne Gamelin Family Cause No. 118 of 2010 and Bernie Hansen and Patricia Hansen Family Cause No. 78 of 2000.

The above authorities emphasise, among other things, that the Courts must consider the best interest of the infant or child in making any decision regarding the child.

I further agree with Mr. Majoli for the Applicants that Section 3 of the Children Act and the First Schedule to the Children Act Cap 59 sets down the criterion that governs any entity which has to make decisions regarding children.

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.

I had the opportunity to scrutinise the witnesses and to hear them first hand and on oath. Their account regarding how the child was picked up from a garbage heap and how the child was eventually matched with the prospective Applicants were gripping. The two witnesses were witnesses of truth and when they found the abandoned child they did not hide their discomfort and inconvenience at the prospect of finding themselves in custody of a child whose background they had no clue about. They were good Samaritans who lifted a human being off a garbage heap. I found that it was awkward for Sarah Ibrahim to find that in spite of all her other responsibility she had to keep the child for two nights in a row. That was not an easy task.

This Court notes that cases of abandoned children bear their unique sensitivities. The Court employ a heightened standard of proof and go to great lengths to ensure that there is no connivance on the part of the witnesses to fix the infant as abandoned when in fact he has living kith and kin who can be found. In this case I examined witnesses on their affidavits and have looked very closely at the documentation used in processing the child's custody. Am satisfied that there is an unbroken chain of evidence from the moment the infant was found to the point at which the home obtained legal custody. Further, I believe the Senior Probation and Social Welfare when he says he did his best to locate the relatives of the minors using print and electronic media. Despite all these efforts no one showed up to claim this child.

The infant was abandoned and without a name. He only got a name at the Children's home. This is a child who in his first year of life has experienced extreme neglect, abandonment and rejection. He deserves better than what life has so far dealt him. I find that an application which has the prospect of offering this child a better chance in life is clearly in the best interest of such a child.

The next issue is whether the Applicants are suitable guardians for the infant. This Court had opportunity to see and to examine two applicants. Applicant No.

1, Raegan Mallaney Gyoffy is 34 years, a Family Youth Specialist and Therapist by Safy of Lexington and a resident of 654 Montclair Drive, Lexington Kentucky USA. She is holder of American Passport no. 216010871 whose expiry date is 29 February 2016. She was married to Mike Joseph Gyorffy on 30th Nov 2002 and there is notarized copy of their marriage certificate. They have two biological children; Mallaney Gyorffy 7 years and Max Gyorffy 4years. The applicant earns in total USD52, 000 from two jobs. She was found to have no criminal record and got police clearance of Kentucky Police Department. Moreover she has a report showing she is in good mental and physical health.

The second Applicant Michael Joseph Gyorffy, 40years also an American and like the 1st Applicant, a resident of Monte Clare Drive Lexington. He is a Professor at the University of Kentucky Psychiatry Department. He is holder of Passport No. 503962909 expiring on 8th April 2023. He is reported to have no criminal record and was given a clean bill of health.

Both Applicants come highly recommended and came to learn of the plight of child true Promise Kids Future an American Christian organization working closely with Noah's Ark.

A plethora of decisions have been made in favour of alien applicants. In two cases Howard Amani Little (Infant and) and Mrs Rebecca Little and that of Francis Palmer (an infant) and Mrs Michelle Louise Palmer Civil appeals 33 and 32 of 2006, respectively, the Court of appeal presided over by Deputy Chief Justice (DCJ) Laetitia Kikonyogo as she then was, found that the Applicants though citizens of the US accepted to 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 Re 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 Family Cause No. 25 of 2009 guardianship was handed to foreign nationals because in that instance it would present an opportunity for the infant to grow up in a good 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.

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 are paramount. An application Civil Application No. 38 of 2012 made subsequent upon Appeals 70 and 81 of 2011 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 they 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 of residence.

Consequently, having decided that this child was criminally abandoned and is therefore 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, Raegan Mallaney Gyorffy and Mike Joseph Gyorffy are hereby given legal guardianship of the aforementioned infant until the infant attains the age of 18 years or until other lawful orders:
2. Additionally this Court permits the applicants Raegan Mallaney Gyorffy and Mike Joseph Gyorffy 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, Raegan Mallaney Gyorffy and Mike Joseph Gyorffy 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 further directed to submit progressive reports of the child every six months to the Probation and Welfare Officer of Busia Municipality, 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 Embassy in Washington DC USA.
6. The Applicants are ordered to 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.
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 Busia District, 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

27 March 2014

27th March 2014

Ruling read in the Presence of Charles Majoli Counsel for the Applicants.

Catherine Bamugemereire

Judge

27th March 2014