

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**FAMILY DIVISION**  
**FAMILY CAUSE 299 OF 2013**

**IN THE MATTER OF JOSHUA MUYINGO STEVEN KATONGOLE AND HENRY KAKOOZA (CHILDREN)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR A LEGAL GUARDIANSHIP ORDER BY JAMES TODD FIGUEROA AND NICOLE THERESA FIGUEROA**

**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; section 14 of the Judicature Act, cap 13; sections 2, 3, 4, 5 & 6 of the Children Act cap 59, section 98 of the Civil Procedure Act cap 71 and Order 52 rules 1 & 3 of the Civil Procedure Rules. The applicants are seeking the following orders:-

1. The applicants be granted legal guardianship of the children Joshua Muyingo, Steven Katongole and Henry Kakooza with full parental rights and responsibilities.
2. Consequent to being appointed the legal guardians of the children, the applicants be at liberty to obtain Ugandan passports for the children and be permitted to immigrate with the children to the United States of America where the applicants reside in order to provide parental guidance and cater for the children's education, guidance, shelter, clothing, medical needs, maintenance, and other basic necessities of life.
3. Costs of this application be provided for.

The grounds of the application are that:-

1. The children are orphans, their parents being deceased.
2. The children being in need of care and protection were committed to the care of Extended Family Ministries.
3. The applicants are ready and willing to provide the children with love, warmth and a healthy family environment.
4. The applicants have been found to be suitable adoptive parents by probation and welfare officers in their country of origin.
5. It is in the best interests of the children that the applicants be granted legal guardianship over them.

The application is supported by the affidavits of the applicants and of Kalungi Faith, Kananura Deus and Hamala Juliet. Learned Counsel Ekirapa Isaac submitted that the children are in need of care, that the applicants are ready and willing to give the children a home to ensure their basic needs are met, and that this is in their best interests.

The Children Act does not specifically provide for guardianship orders. However, article 139(1) of the Constitution and 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 guiding principles in making decisions relating to children. Court shall have regard to 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.

The Children Act defines "guardian" to mean a person having parental responsibility for a child. It was stated in *Nabyama Moses alias Nabyama Abasa Family Cause No. 76/2011* 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. 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.

The applicants also pray to obtain Ugandan passports for the children and to immigrate with them to United States of America (USA) where they reside, in order to fulfill their parental responsibilities. The Court of Appeal in *Deborah Joyce Alitubeera & Richard Masaba Civil Appeals No. 70 & 81/2011*, when addressing a similar situation, emphasized the importance of the welfare principle and the need for applicants to travel with the children to their home countries.

The evidence on record shows that the three children are siblings. They were born to Byakwaga James, and Nakatte Atuhiire who are both deceased. Muyingo Joshua was born on 3<sup>rd</sup> January 2007. Katongole Steven was born on 28<sup>th</sup> December 2008. Kakooza Henry was born on 11<sup>th</sup> June 2010. Their father died in a motor accident on 12<sup>th</sup> October 2010. Their mother fell sick and later died on 20<sup>th</sup> December 2010. After that the children first lived in Mbarara with their maternal

aunt Midias but later relocated to their paternal aunt Faith Kalungi. Their other relatives have financial constraints and personal commitments and cannot afford to take care of them. The children were eventually admitted to Extended Family Support Organization, a community based organization for support. This court examined two of the children, Muyingo Joshua and Katongole Steven, after determining them to be of a fairly understanding age. They informed this court that they appreciate that they will join the applicants' family, and they had no regrets about it.

It is evident Muyingo Joshua, aged 7 years, Katongole Steven, aged 6 years, and Kakooza Henry, aged 4 years, are in need of a family to grow in and be cared for. They are total orphans. The Extended Family Support Organization is currently only providing support for the three children. It cannot provide a permanent home for them. The organization does not even have an approved home and their registration certificate indicates they carry out development activities. The director of the institution Hamala Juliet testified to this court that they do not live with the children. Muyingo Joshua stated to court that he lives with another mother who is not the real mother. This portrays their state of homelessness.

The applicants desire to parent the children. They are American citizens and a married couple. They have two children. They have been found to be suitable parents by M/S Hawaii International Child whose home study on them is annexed to the 1<sup>st</sup> applicant's affidavit as **F** and **G**. James Todd Figueroa is an Equipment Operator 2<sup>nd</sup> Class (EO2) with the United States Navy. Nicole Theresa Figueroa is a stay at home mom looking after their two children. The reports from the State Police of Hawaii and the Federal Bureau of Investigations, annexed to the applicants' affidavits as **H** and **M** respectively reveal that the applicants have no criminal record. They are portrayed by the medical reports annexed to their respective affidavits as **I** and **N** to be healthy. The home study states that they have the requirements to take on the three children regarding their age, length of marriage, household, financial status, health, and ability to parent, among other requirements.

I find that where the three children, who are siblings, are total orphans, and where the said children's relatives are unable to care for them, or are showing no interest in availing them a permanent home, the applicants are the next best suited persons to look after them. It is a blessing, and in the children's best interests, that all the three children will continue to live as one family as siblings under the legal guardianship of the applicants who are a married couple with children.

The applicants meet the requirements of legal guardianship. Denying them to look after the three children would deprive the children of the available opportunity of being in a home where each is loved and parented. The children are clearly vulnerable and they need a home to grow up in. This is a proper case where, through a guardianship order, the three children will get a home, love, care and basic needs. It will be in their best interests to allow this application if the three children are to enjoy the said basic needs permanently in the course of their growing up.

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

1. James Todd Figueroa and Nicole Theresa Figueroa are granted legal guardianship of the children Joshua Muyingo, Steven Katongole and Henry Kakooza.
2. The legal guardians are permitted to immigrate with the children to the United States of America where the applicants reside in order to fulfill their parental responsibilities.
3. The legal guardians are directed to obtain Ugandan passports for the three children using their current names.
4. The legal guardians shall submit once a year, photographs and a report on the state of health, progress and welfare of each of the three children to the Registrar, Family Division of the High Court of Uganda at Kampala until each attains 18 (eighteen) years of age or until directed otherwise.
5. 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; and the Ministry of Justice and Constitutional Affairs of Uganda.
6. The legal guardians shall immediately communicate any changes of addresses to the authorities mentioned above.
  - a) Costs of this application will be met by the applicants.

**Dated at Kampala this 11<sup>th</sup> day of April 2014.**

**Percy Night Tuhaise**

**Judge.**