

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
FAMILY CAUSE 38 OF 2014

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

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 &
3 OF THE CIVIL PROCEDURE RULES SI 71 – 1**

AND

IN THE MATTER OF RONALD SEGUYA AND FRANK KASOZI (CHILDREN)

AND

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY DAVID
BECKER AND DENETTE BECKER**

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; and 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. David Becker and Denette Becker be appointed legal guardians of the children Ronald Seguya and Frank Kasozi.
2. The applicants be permitted to travel with the children outside Uganda to fulfill their parental responsibilities and complete the adoption process in the United States of America.
3. Costs of this application be provided for.

The grounds of the application are that:-

1. The children's parents are dead and the said children are in dire need of care and protection.
2. The children are staying at Greenhouse orphanage home.
3. The children were brought to Greenhouse orphanage home with the consent of their relatives.
4. The relatives are not in position to take care of the welfare needs of the children.
5. The welfare of the said children will be better served if the children are placed under the guardianship and custody of the applicants.
6. The applicants met the children when they had come to volunteer at the orphanage.
7. The children are in need of a permanent home, parental love, care and protection.
8. The applicants are suitable persons and have the means to cater for the children.
9. Besides the applicants, no one is ready and willing to provide the children with a permanent home, parental love, care and protection.
10. It is in the best interests of the children that this honourable court be pleased to grant this application.

The application is supported by the affidavits of the applicants plus the affidavits of Kalibbala Kevin, Charles Obalim, Damali Namagembe, Alice Nvanungi, Mariam Nasejje, Simon Peter Bakabulindi, Nasaazi Margret and Halima Nayiga.

Learned Counsel Richard Rugambwa submitted that the applicants' legal guardianship of the children would be in their best interests, and that the applicants are suitable to adopt the two children. He cited *Re M (an infant) Adoption Cause No 9/1995*; *Deborah Joyce Alitubeera & Richard Masaba Civil Appeals No. 70 & 81/2011*; and *Civil Application 38/2012* to support the application.

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 read with the first schedule of the Children Act sets out the guiding principles in making decisions relating to children. The 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 relevant circumstances; 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 are applying for legal guardianship of the two children, including being permitted to travel with them outside Uganda to fulfill their parental responsibilities and complete the adoption process in the United States of America (USA). 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. Further, in *Civil Application No 38/2012*, the same court reviewed their decision in the same cases and stated that the intention of their judgment could not be fully implemented unless they deleted the condition requiring legal guardians to come back and file adoption applications in Uganda.

The evidence on record shows that the first child, Ronald Seguya, was born to Hadija Nazzimuli and Ssekikubo Sam, who are both deceased, on 8th February 2004. The child’s grandmother was too weak to look after him. His other relatives had financial constraints and personal commitments and could not take care of him, hence why they gave him up to Greenfield orphanage. The child is currently under the care of the Greenhouse orphanage by virtue of a care order issued by Mwanga II Family and Children Court, Mengo. The child, currently aged 10 years, after being determined by this court to be of understanding age, testified on oath before this court that he appreciates the nature of the application and he is agreeable to it.

The second child, Kasozi Frank, was born to Bukenya Charles and Nabunya Sarah on 15th May 2003. His father and mother died in a motor accident. His relatives were financially constrained in taking care of the child. As a result, he was placed in Greenhouse orphanage by virtue of a care order issued to the orphanage by Mwanga II Family and Children Court, Mengo. He is currently aged 11 years. He, after being determined by this court to be of understanding age, testified on oath before this court that he appreciates the nature of the application and he is agreeable to it.

It is evident that Ronald Seguya and Frank Kasozi, each in their separate circumstances, are in need of a family to grow in and be cared for. The Greenhouse orphanage which has legal custody of the two children is an institution which cannot provide a permanent home for them. The children’s respective relatives have consented to the grant of the application.

The applicants desire to parent the two children. They are American citizens and a married couple. They have three biological children. They have been found to be suitable parents by M/S Zimbelman Evaluations whose home study on the applicants is on the court record. David Becker is a Business Manager at Central Dakota Eye Care since June 2002 as per the employment letter attached to his affidavit. Denette Becker was first employed as optometrist at Central Dakota Eye Care since 30th June 1992 and eventually became a partner to date as, per employment letter attached to her affidavit. The home study report on the applicants states that they have the necessary financial resources to provide for the two children.

The applicants volunteered at the Greenhouse orphanage in Kampala Uganda for a month where they interacted and bonded with the two children. The applicants have also been recommended by Mukiibi Ronald the probation and social welfare officer (PSWO) Ssisa subcounty Wakiso district, whose testimony and report, however, gives a wrong impression that the two boys share the same parents. The reports from the Division of Criminal Investigation, George S. Michaelson Criminal Justice Center reveal the applicants as having no criminal record. They are portrayed by the medical reports to be healthy. The home study report and other attached documents testify to the couple's stability, maturity, compassion and financial responsibility.

I find that where both children, though from different homes, are total orphans cared for by the Greenhouse orphanage, and where the relatives of each of the said children are unable to care for them, or are showing no interest in looking after them, the applicants are the next best suited persons to look after them.

On basis of the adduced evidence, the applicants meet the requirements of legal guardianship. Denying them to look after the two children would deprive the two children of the available opportunity of being in a home where each is loved and parented. This is a proper case where, through a guardianship order, the two children will get a home, love, care and basic needs they are currently enjoying temporarily at the Greenhouse orphanage. It will be in their best interests to allow this application if the two 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. David Becker and Denette Becker are appointed legal guardians of the two children Ronald Seguya and Frank Kasozi.
2. The applicants are permitted to travel with the two children outside Uganda to fulfill their parental responsibilities and complete the adoption process in the United States of America.
3. The legal guardians are directed to obtain Ugandan passports for the two 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 two 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 11th day of April 2014.

Percy Night Tuhaise

Judge.