

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**FAMILY DIVISION**  
**FAMILY CAUSE 107 OF 2014**

**IN THE MATTER OF KEMIGISHA SAVANNA KIMBERLY RWABAJUNGU  
(INFANT)**

**AND**

**IN THE MATTER OF AN APPLICATION BY KEMIGISA FLORENCE (APPLICANT)  
FOR APPOINTMENT AS THE LEGAL GUARDIAN OF KEMIGISHA SAVANNAH  
KIMBERLY RWABAJUNGU (AGED 8 YEARS) (THE INFANT)**

**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 3(1, 2 & 5) 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 applicant is seeking the following orders:-

1. The applicant be appointed legal guardian of the infant Kemigisha Savannah Kimberly Rwabajungu.
2. The infant Kemigisha Savannah Kimberly Rwabajungu be allowed to travel/immigrate to Canberra, Australia with the applicant.
3. Costs of this application be borne by the applicant.

The grounds of the application are that:-

1. The applicant is the maternal grandmother of the infant and the infant is a Ugandan citizen aged 8 years.
2. The applicant has been living with the infant at her flat in Bugolobi Flats and has been in charge of paying school fees for the infant since she enrolled to start primary education at Kampala Parents School and she has also been catering for all the infant's welfare needs.
3. The applicant has been posted to Uganda High Commission Canberra, Australia as an Administrative Attache whereat she desires to continue living with and catering for the infant's education and other welfare needs hence the need to travel with the infant.
4. It is a requirement of the Australian authorities for the applicant to be guardian of the infant to enter Australia with her.

5. The biological mother and father of the infant are Ugandan citizens and their consent to the grant of the order and travel of the infant with the applicant has been sought and obtained.
6. The infant already possesses a Ugandan passport.
7. The application is for the welfare and benefit of the infant.
8. The application is urgent.
9. It is in the interests of justice to grant the application.

The application is supported by the affidavit of the applicant. The biological mother of the infant signed a statutory declaration concerning the infant's names. Learned Counsel Nester Byamugisha, in his written submissions, stated that this court has jurisdiction to appoint the applicant a legal guardian, that the applicant meets the requirements of a legal guardian, and that the applicant's legal guardianship of the infant would be in the best interests of the child. He cited *Deborah Joyce Alitubeera & Richard Masaba Civil Appeals No. 70 & 81/2011; In the matter of an application for guardianship and custody and maintenance Griet Orisea (mother) of Alya Mayanja HC Misc Application No. 20/2003*, and *In the matter of an application for legal guardianship of Mandela Muhanguzi HC FC No. 57/2009* to support the application.

The applicant, the infant, and her biological parents attended court when the application was heard. They later availed court with originals of the documents annexed to the affidavits, which court compared with the annexed photocopies and found them to be similar. The infant was also examined on oath after establishing that she was of understanding age.

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, and in various international conventions ratified by Uganda concerning the rights of children.

Section 3 read with the first schedule to the Children Act sets out the 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 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. 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. See ***Nabyama Moses alias Nabyama Abasa Family Cause No. 76/2011***.

The application for legal guardianship of Kemigisha Savannah Kimberly Rwabajungu includes a prayer that the applicant be permitted to travel with the child to Canberra Australia where she has been posted to work as Administrative Attache. The Court of Appeal in ***Deborah Joyce Alitubeera & Richard Masaba Civil Appeals No. 70 & 81/2011*** 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 child was born to Diana Bonabana Rwabyomere and Ambrose Rwabajungu Mutabazi on 23/03/2006 at Mulago. A photocopy of her birth certificate is on the court record. The child is now aged 8 years and a few months. She testified on oath before this court that she agrees with the arrangement of her grandmother taking her on and travelling with her to Australia. Photocopies of the infant's biological identification documents, namely Ugandan passport numbers B0579736 expiring on 22/11/2016 for Rwabajungu Ambrose and B0701836 expiring on 26/09/2018 for Diana Bonabana are on the court record. A copy of the parents' consent to let the infant travel with her grandmother is also on the court record. The infant has a Ugandan passport number B0701838 expiring on 26/09/2018.

The affidavit evidence on record shows the applicant has been living with the infant at her flat in Bugolobi Flats. The applicant has been in charge of paying the infant's school fees since her enrolment in primary school. She has also been catering for all the child's welfare needs. Her identification documents, namely a photocopy of Ugandan passport number DA024481 expiring on 28/03/2024 is on court record. She has been posted to Uganda High Commission Canberra, Australia as an Administrative Attache. The nature of her employment shows that she has the financial resources to provide for the child who is her grandchild. The evidence on record shows that the child was living with and being cared for by the applicant who is her grandmother with the acquiescence of her biological parents even before the filing of this application. The application is a formality to enable the infant travel and live with her grandmother outside Uganda.

In this case, I find that where the applicant has been living with the child and catering for all her needs, and where the child's parents have consented to the applicant's continuing to live with the child, this is an appropriate case where guardianship should not be refused. It will be in her best interests to allow this application to allow the child to continue living with her grandmother with the consent of the child's biological parents.

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

1. The applicant is appointed legal guardian of the infant Kemigisha Savannah Kimberly Rwabajungu.
2. The infant Kemigisha Savannah Kimberly Rwabajungu is allowed to travel/immigrate to Canberra, Australia with the applicant.
3. The legal guardian shall submit once a year, photographs and a report on the state of health, progress and welfare of the child to the Registrar, Family Division of the High Court of Uganda at Kampala until she attains 18 (eighteen) years of age or until directed otherwise.
4. The Registrar of the High Court shall furnish a copy of the orders in this ruling, together with the address of the legal guardian in Australia to the Ministry of Foreign Affairs of Uganda at Kampala; and the Ministry of Justice and Constitutional Affairs of Uganda.
5. The legal guardian shall immediately communicate any changes of addresses to the authorities mentioned above.
6. Costs of this application will be borne by the applicant.

**Dated at Kampala this 16<sup>th</sup> day of June 2014.**

**Percy Night Tuhaise**

**Judge.**