

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT SOROTI**

**FAMILY CAUSE 01 OF 2015**

**IN THE MATTER OF JUSTIN EMAYU .....AN INFANT**

**AND**

**IN THE MATTER OF AN APPLICATION FOR**

**LEGAL GUARDIANSHIP ORDER AND OTHER ORDERS BY**

**RUDY SMETS AND**

**ILSE REINHILDE FRANCOIS WILLEKENS .....APPLICANTS**

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**RULING**

This is an application brought under article 139 ( 1) of the Constitution , Section 14 of the Judicature Act Cap 13; Sections 2,3,4,5,6 and sections 45 and 46 of the Children Act , section 98 of the Civil procedure Act order 52 rules 1 and 3 of the Civil Procedure Rules.

The applicants seek two orders. The first one is to be appointed legal guardians of the infant and the second order is that they be allowed to travel outside Uganda to fulfil parental obligations and to complete the adoption process in Belgium.

The application was supported with affidavits of the two applicants and supporting documents; Charles Ekadu father of the infant; Simon Orugon a social welfare worker with AMECET; Elsie Teylingen Director of AMECET; Eweru Peter LCI Chairman of Owangai village; Abuo Kevin relative of Susan Abilo mother of the infant.

Applicants were represented by Ms. Stella Ogwal of Nkwanga & Partners Advocates. In attendance were Mr. Simon Orugen, Social worker with AMECET Youth with a Mission Children Home; Ms. Elsie Vans Teylingen the director of AMECET,; Mr. Charles Ekadu father of the infant; the infant Justin Emayu ( aged about two years) and the two applicants.

Counsel for the applicant filed written submissions and authorities that i have carefully considered.

The grounds for allowing an application for guardianship is that it is in the best interests of the child. In determining the best interests, the court is enjoined to have regard to the principles set out in section 3 of the 1st schedule to the Children Act.

Of relevance to this application are:

The child's physical, emotional, and educational needs;

The likely effects of any changes in the child's environment,

The child's age and background,

Any harm the child has suffered or is at risk of suffering,

The capacity of the child's parents or others involved in his upbringing, in meeting the child's needs.

I have examined the affidavits and documents accompanying this application.

According to Simon Orugon, a Social Worker with AMECET Children Home, the infant Justin Emayu was taken to the Home on 28th October 2013, by his mother Susan Abilo for temporary custody, when he was two months old.

When AMECET contacted the infant's father Charles Ekadu, he declined to take custody of the child.

On 6th October 2014, AMECET secured a Care order for the infant from the Family and Children Court at Soroti under Care Application No. 24 of 2014.

In his affidavit, Mr. Ekadu Charles, father of the infant avers that he has eight biological children. The first seven children are from a previous relationship while the infant's mother is Susan Abilo from whom he is separated.

Mr. Ekadu Charles indicated his consent to the appointment of the applicants as legal guardians and the subsequent adoption process.

I am satisfied by the affidavits of Ekadu Charles that he has not received or agreed to receive any financial reward from the applicants.

Owing to evidence that the mother of the infant Susan Abilo is mentally unstable, I have dispensed with her consent.

The affidavit of Eweru Peter, LC 1 Chairman of Owangai village, Lalle , Soroti District confirms Mr. Ekadu is a resident of his village and states further that Susan Abilo lived with Ekadu but her whereabouts are unknown as she is mentally unstable and moves from place to place.

The affidavit of Abuo Kevin of Omukura village, Owangayi Lalle Parish, Kamuda, Soroti District shows that she is the wife of Susan Abilo's uncle and that Susan Abilo is mentally unstable and occasionally lives with her then disappears.

Abuo Kevin states that she has custody of Peter, Susan Abilo's son and that as such, she cannot take on another child.

The affidavit of Else Van Teylingen , director of AMECET confirms that the infant is in their custody and that she has not been promised a financial reward to support this application.

From the foregoing analysis, the infant's current circumstances are not conducive to his emotional, physical and well being as he is unloved by his parents and he is now in the care of AMECET Children Home.

The Probation and Social Welfare Services Officer, Soroti, Mr. Oteko Ekalam in his report dated 17th October 2014, confirms the above narrative and recommends that the infant is in need of care and protection.

The applicants are citizens of Belgium, a married couple, and both gainfully employed in their country of residence.

They have availed court with a document entitled ' Extract from the Criminal Record ( Model 2) issued by the Mayor of Hasselt City certifying that both applicants have no criminal record concerning children.

The applicants were certified to be of good health by Doctor Josef Ludo Merten Mertens of Hasselt.

The applicants have shown that they were prepared for guardianship and adoption by the Flemish Central Authority. They were also examined by the Public Prosecutions Department of Hasselt on their suitability as adoptive parents in 2010.

The applicants have demonstrated their financial security and their potential to accord the infant emotional, physical and educational needs in future.

All documents availed to court by the applicants concerning their financial status, marital status, suitability as adoptive parents, criminal clearance, medical clearance, and employment are duly authenticated.

In the matter of **Michael Okiror (an infant), Soroti FC 3 of 2014**, I allowed a similar application.

For the reasons given above, i am convinced that it is in the best interests of the child that this application be allowed. I hereby make the following orders:

**1. RUDY SMETS AND ILSE REINHILDE FRANCOIS WILLEKENS**

are appointed legal guardians to **JUSTIN EMAYU** and they are:

- a) Permitted to travel with the child to Belgium in order to fulfil their obligations as legal guardians.
- b) Permitted to complete the adoption process in Belgium.
- c) Directed to obtain a Ugandan passport for the child in the names of Justin Emayu.
- d) Directed to leave their addresses both email and residence where the child will be residing with the Deputy registrar Soroti High Court, and copies with the Ministry of Foreign Affairs in Kampala and the Uganda Embassy in Belgium or equivalent.

- e) Directed to submit a report on the state of the child to the Deputy registrar, Soroti every six months until the adoption process is complete.
- f) Directed to register this order with the Registrar of Births and Deaths, Kampala.

**DATED AT SOROTI THIS 20TH DAY OF APRIL 2015.**

**HON. LADY JUSTICE H. WOLAYO**