

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT ARUA**

**HCT – 08 – CV – FC – 0002 OF 2015**

**IN THE MATTER OF RWOTHMIO DAMIAN (INFANT)**

**AND**

**IN THE MATTER OF AN APPLICATION BY TRAUNFELLNER BERNHARD  
AND TRAUNFELLNER – KUGLER REGINA FOR APPOINTMENT AS THE  
LEGAL GUARDIANS OF RWOTHMIO DAMIAN (AGED 7 MONTHS)**

**RULING**

**BEFORE HON. JUSTICE VINCENT OKWANGA**

The application for legal guardianship by Traunfellner Benhard and Traunfeller Kugler Regina was brought by Notice of Motion under Arts 139 (1), 34 (1) and (2) of the Constitution, S5.14 JA, 3, 4, (1) & (2) & (5) of the Children’s Act and S.98 CPA and orders 52 rr.1 & 2 CPR for orders that the applicants Traunfellner Benhard and Traunfeller Kugler Regina be appointed legal guardians of the child Rwothmio Damian, that the couple be allowed to travel with the said infant outside the country to Austria, – the couple’s country of residence and live with them thereat and complete the adoption process in Austria and for costs of this application.

The application is supported by the affidavits of the two applicants, that of Sister Kojoa Maureen, Director I/C of Moyo Babies Home and that of Gloria Anifa, maternal Aunt of the infant, all attached to the application as various annextures herein.

In her submission, Ms. Innocent Ngobi – Ndiko who appeared for the applicants submitted that the 2<sup>nd</sup> applicant, Regina Traunfellner-Kugler is a female aged 34 years, married to the 1<sup>st</sup> applicant Traunfellner Benhard – male aged 40 years old – both having

been married for 8 years now are childless – having no biological child(ren) of their own and both are employed as accountant and a construction civil Engineer respectively in their country of origin. The couple first learnt of the plight of this infant Rwothmio Damian in July, 2015 when they first visited Moyo Babies Home where they came to work as volunteers from where the Director of the said Home narrated to them the sad and unfortunate history of how the mother of this child died soon after the birth of this child and the child's biological father not being known, the child was brought to the Babies' Home by the maternal Aunt as the great grandmother with whom the child was left could not manage to bring him up. The couple then picked interest and bonded with the child before expressing interest in making this application for guardianship.

The maternal relatives and kinsmen do not have any objections for this application for guardianship as they don't have the capacity to bring up and or look after this child. The reports of the PSWOs of Nebbi and Moyo Districts respectively are attached as annexures herein all detailing the history and unique circumstances of this child.

The main gist of this application is that Ms. Bithum Roselyn, the biological mother of Rwothmio Damian, the infant herein died immediately shortly after his delivery at Oleny Trading Centre on the way to Erussi Health Centre Unit on 29/04/2015, and that the biological father of that infant Rwothmio Damian is unknown since the mother kept the pregnancy a secret from everyone else. After such unfortunate event the child Rwothmio Damian was left at the care of the great grandmother of 73 years old who is practically unable to take care of him at the advanced age, hence the decision to take him to Moyo Babies' Home on 25/05/2015 from where he has lived since and where the couple also learnt of his plight.

From the records herein, the said child Rwothmio Damian is now aged 7 months and 11 days todate.

The relevant issues I would envisage for consideration by this Hon. Court are:-

1. Whether this Hon. Court has jurisdiction to entertain this application.

2. Whether the application for legal guardianship is in the best interest of this child, and
3. Whether the applicants are fit and proper persons to be appointed legal guardians of this infant.

Regarding the first issue herein above various judicial decisions and authorities in this court and Superior Courts have held that this Hon.Court has jurisdiction to entertain application for guardianship orders. (See Civil Appeals Nos. 32 & 33 of 2006 **Francis Palmer (An Infant) and Mrs. Michelle Louise Palmer and Howard Amani Little (An infant) and Mrs Rebecca Little** in which the Court of Appeal of Uganda held that the High Court of Uganda may invoke its inherent powers to grant remedies where there are no specific provisions pertaining to a particular situation or in appropriate cases. By virtue of the above judicial precedent I am satisfied that this Hon. Court has jurisdiction to entertain this application.

Regarding the second issue above, when considering an application of this nature this Hon. Court is guided by the welfare principles as provided under section 3 of the Children Act (Cap. 59) and the first schedule to that Act.

Under that section the court must consider the best interest of the child as taking precedence over all other considerations.

In the instant case, the child here is barely 7 months old, his mother died immediately soon after his birth and the mother having been unmarried and having kept her pregnancy a secret and not telling any one else who the biological father of this child is left as a total orphan and now rendered destitute completely. Its maternal kins are unable to provide any necessary support and protection required for a child of such an age, thus ending up at the Moyo Babies' Home where the applicants chanced to get him.

In the matter of Ambrose Kajjunga and Justus Byamukama (Minors) and in the matter of an application for Legal Guardianship by Vanwetswinkle Tim, Frank Leo and Lamers Liesbeth Artlette Suzy; F.C. No. 0044 of 2015; Justice Catherine Bamugemerere, (as she then was) held;

“This Court restates that in (all) matters concerning children, the Court is guided by the Welfare principle as provided for in section 3 of the Children Act (Cap. 59) and the first schedule to the Children Act. The welfare principle requires paramount consideration to be given to the child’s best interest over all other issues.”

From the above decisions, it can safely be said that the welfare principles require that the best interest of the child overrides all other considerations. Accordingly, I do find that this child, Rwothmio Damian who is barely aged 7 months at the moment and having been left at the care of an aged great grandmother of 73 years old with no other kinsman capable of giving him the necessities of life, without a known biological father, it would be in his best interests that an order for legal guardianship is made in his favour.

On the suitability of the two applicants, I note that the first applicant, Traunfellner Benhard is aged 40 years old, has a permanent employment as a construction engineer at his country of residence Austria, his health status has been certified positively, he is married to the second applicant for 8 years to-date and the couple doesn’t have any child of their own to-date. The two applicants have also produced social backgrounds reports from their country of residence showing no criminal record nor any records of child abuse or molestation, I am satisfied that the couple are both fit and proper persons to be appointed legal guardians to the child, Damian Rwothmio.

I have also taken in consideration the minutes of the family meeting of the kinsmen of this child in which they express their consent to have this child placed under legal guardianship of this couple.

From the social reports on the financial and physical health of the two applicants, I am also of the view that the couple have a sound financial and material background to enable them receive and bring up this child in terms of care and protection in a stable home environment and give it the necessary care and protection he requires to grow into an adult with dignity.

In the end I am satisfied that this is a proper case in which this Hon. Court feels that it is in the best interest of the child Rwothmio Damian that a legal guardianship order is issued.

Accordingly, the application is allowed on the following terms as herein:-

1. The two applicants, Traunfellner Benhard and Traunfellner-Kugler Regina are hereby jointly granted legal guardianship of the infant Rwothmio Damian to care and protect him and exercise their parental role and responsibilities over him until this child attains the age of 18 years or until further orders of this court.
2. The two applicants as a couple shall be free to travel with the said child outside Uganda, to their country of origin Austria where they ordinarily reside and are gainfully employed.
3. The two applicants are further permitted to initiate and complete all the necessary adoption procedures pertaining to this child Rwothmio Damian in Austria where they ordinarily reside.
4. The two legal guardians shall submit, once biannually, a report with the current photograph of child Rwothmio Damian, showing the state of his health, progress and welfare to the Registrar Family Division of the High Court of Uganda at Kampala, until the child attends the age of 18 years or until otherwise directed by further order of this Hon. Court.
5. The legal guardians shall in addition be required to ensure that the infant retains its Ugandan citizenship in addition to any other citizenship they may acquire in due course.
6. Under no circumstances shall the legal guardians allow, convert, influence or do anything to change the child's religion from the Christian faith in which it has been baptized and born in before this child attains the age of 18 years of age.
7. The applicants shall furnish their physical address in this court, and email address and contact phone numbers for ease of contacts.
8. Costs of this application shall be met by the applicants.

It is hereby ordered!

**VINCENT OKWANGA**

**JUDGE**

**10/12/2015**