

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**

**FAMILY CAUSE NO. 92 OF 2009**

**IN THE MATTER OF NANKYA MERCY (INFANT)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS THE LEGAL  
GUARDIAN OF NANKYA MERCY (AGED 8 MONTHS) BY KELLY ANN PAXTON**

**BEFORE: HON. LADY JUSTICE MARGARET OGULI OUMO**

**RULING:**

The applicant brought this application by Notice of Motion under Article 139(1) of the Constitution of the Republic of Uganda, Sections 14, 33 and 39 of the Judicature Act, Cap 13 and Section 3 of the Children Act, Cap 59. in which the applicant is seeking for the following orders:

1. That the applicant be appointed legal guardian of the infant Nankya Mercy.
2. That costs of the application be provided for.

The application is supported by the statutory declaration of the applicant, dated 29th June, 2009, the affidavits of Barbara Nankya, the Administrator of Sanyu Babies Home dated 13th March , 2009, Carol Bankushya, the Probation and Social Welfare Officer, Central Division, Kampala, dated 29th June, 2009.

The grounds of the application are as follows:

1. The infant was abandoned by her mother shortly after birth at Mulago hospital.
2. That the parents of the infant are unknown.
3. That the infant is under the custody and care of Sanyu Babies Home.
4. That the applicant wishes to provide the infant with a home, parental love and care.
5. That this application is for the welfare and benefit of the infant.

At the hearing of the application, the applicant was represented by Mr. Peter Nyombi, assisted by Rebecca Mugabi.

The High Court has original unlimited jurisdiction over all matters in Uganda.

**See: Article 139(1) of the Constitution.**

Section 14 of the Judicature Act, on similar terms gives the court the same jurisdiction. In the exercise of that jurisdiction, the court has powers to grant remedies absolutely or such terms as it deems fit.

**See: Section 33 of the Judicature Act. Can 13.**

Similarly, section 98 of the Civil Procedure Act provides that the High Court has powers to grant such remedies as are necessary in the interests of justice and to prevent the abuse of court process.

A child has been defined as any person below 18 years of age.

**See: Section 2 of the Children Act.**

The infant here is 1 year and 3 months old and is therefore a child within the meaning of the Act. In making any decision concerning a child, the welfare of the child is of paramount consideration.

**See: Section 3 and paragraph 1(b) of the First Schedule to the Children Act.**

**Issue No. 1 whether the application is for the welfare and in the best interest of the child?**

Mr. Nyombi, counsel for the applicant submitted that, on 16/10/08, the Officer in Charge of Casualty Police Post New Mulago Hospital reported the matter to the In charge Social Works, Mulago Hospital about a child abandoned by an unknown mother - see Annexure 'B' on the court file. That upon receipt of the report, the Senior Social worker, Mulago Hospital, one Faith Karamagi referred the infant to a Probation Officer at Mwanga II Road Court to be placed in a Babies Home. See: Annexure 'C' attached to Ms. Nankya's affidavit.

Mr. Nyombi, submitted that the child was on 21/10/08, received at Sanyu Babies Home and was recommitted on 4/5/09, after the Ministry of Gender and Social Development issued a letter recognizing the Home. See Annexure 'F' to Ms. Nankya's supplementary affidavit dated 6/07/2009. This is confirmed by the Probation and Social Welfare Officer, Kampala City council, one Carolyn Bankusha in her affidavit in support of the application on the court file.

In view of the fact that the child was abandoned and the parents are not known, court is of the opinion that the grant if made will be for the welfare of the child and in her best interests as it will give her the opportunity to grow up in a home instead of an institution.

**Issue No. 2- whether the applicant is a suitable guardian for the child?**

The applicant is an adult American citizen aged 37 years, and a notarized copy of her passport is attached as Annexure 'A' to her statutory declaration.

The applicant is employed by state Farm Insurance Companies as a Senior Claims Manager. A notarized copy of a letter from her employer is attached as Annexure 'B'.

The home of the applicant has been recommended as suitable for raising the infant — see copy of the Home Study attached as Annexure 'D'.

According to paragraph 13 of her affidavit, the applicant depones that she has no criminal record and as evidence, she has also attached a Certificate of Good Conduct from Interpol. See Annexure 'E'.

Counsel for the applicant submitted that according to section 3 of the Children Act, in making any decision concerning a child, the most important consideration is the welfare of the child. That the application is for the welfare and best interest of the child as the child was abandoned and the parents are not known. That the child is at Sanyu Babies Home and the applicant wished to provide the child with a home, parental love and care.

In view of the above, court is of the opinion that the applicant, who is female, is a suitable guardian for the child who is also a girl and the application will be for the welfare and in the

child's best interest. Consequently the application is allowed in the following terms and conditions: -

1. The applicant is appointed the legal guardian of the infant, Nankya Mercy, with full parental rights and responsibilities.
2. The applicant is directed to register the order with the Registrar of Documents, Uganda Registration Services Bureau, Ministry of Justice and Constitutional Affairs, Kampala.
3. The applicant is directed to register the order with the United States Embassy in Kampala and the Ugandan Embassy in Washington.
4. The applicant is directed to obtain a Ugandan passport for the child and to renew it from time to time as required by the law.
5. The applicant is permitted to travel out of Uganda with the child.
6. The applicant is directed to register the order with the authority responsible for children and Family affairs in Lincoln, Nebraska, USA and to file a report once every year regarding the state of the welfare of the child, to the Registrar, Family Division High Court, Kampala and to continue to do so until the child is 18 years of age or until directed otherwise.
7. The court makes no order as to costs.

**Margaret C. Oguli Oumo**

**JUDGE**

**30/10/2009**

Present:

1. Counsel for the applicant
2. The applicant
3. Nalongo Nandaula — Court Clerk
4. Nyakwebara Elizabeth — Research Assistant