

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

**FAMILY CAUSE NO. 118 OF 2009**

**IN THE MATTER OF THE CHILDREN ACT, CAP 59**

**AND**

**IN THE MATTER OF MARVIN (AN INFANT)**

**AND IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY  
LINDSEY V. DOYLE AND RYAN DOYLE**

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

**RULING:**

The applicants who are American citizens bring this application by Notice of Motion under section 33 of the Judicature Act, cap 13, section 98 of the Civil Procedure Act Cap 71 and section 3 of the children Act cap 59, in which they are seeking for the following orders;

1. That they be appointed legal guardians of Marvin (an infant).
2. The costs of the application be provided for.

The application is supported by the affidavit of the second applicant dated the 1st September 2009.

The grounds of the application are:

1. That the child is in need of proper care and protection.
2. That the applicants are ready, willing and able to provide the child with a loving home.
3. That the applicants are responsible people working for gain and capable of catering for the child's needs.

At the hearing of the application the applicants were represented by Mr. Nicholas Opiyo.

The High court has original unlimited jurisdiction in all matters.

**See: Article 139(1) of the Constitution. 1995.**

**See: Section 14 of the Judicature Act Ca 13. Laws of Uganda.**

Similarly, under section 98 of the Civil Procedure Act, 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 child here is 4 years of age, see Annexure 'C' on the court file.

He is therefore a child within the meaning of the Children Act.

In making any decision concerning a child, the welfare of the child is of paramount importance.

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

**Issue No. 1—whether the grant will be for the welfare and in the best interests of the child?.**

Mr. Nicholas Opiyo submitted that the child's biological parents are unknown as he was abandoned in a taxi at Mpererwe stage by an unknown person on 28th July 2005, when he was estimated to be one year old. That the matter was referred to Old Kampala Police Station vide S.D 61/27/07/05. The matter was later reported to the Probation and social Welfare Officer and to the Medical social worker Mulago Hospital, Ms Karamagi attached as Annexure 'B'.

Mr. Opiyo submitted that having failed to place the child in an appropriate home in Kampala, the social worker at Mulago Hospital referred the child for placement in Jinja in Amani Babies Cottage. That on 19/06/06, the Probation officer obtained a Care Order in respect of the child, from the Jinja Children and Family Court.

Mr. Opiyo contended that the applicants visited the Babies Home in Jinja and fell in love with infant and offered to provide him with a loving and caring family outside the Babies home. The applicants were granted a care order in respect of the child on 18 June, 2006 — see care order on the court file.

In view of the fact that the child's parents are unknown and he was abandoned and he is already in a home, an institution, which is not a good place for the child to grow up in, court is of the opinion that the grant will be for the welfare of the child.

**Issue No. 2—whether the applicants are suitable guardians for the child?**

The applicants are married — see their Marriage Certificate attached as Annexure 'A'.  
The applicants have a permanent home at 450 Lee — Avenue St. Louis Missouri, USA.

The applicants have their biological children.

1. Noah, 6 years
2. Elizabeth, 5 years
3. Emma Lynn, 4 year

Mr. Opiyo contended that all the children are enthusiastically waiting for Marvin to join them.

In view of the above, court is of the view that the child will not find difficulty in integrating into the applicants' family.

The applicants have undergone a home study in the USA in respect of the matter and have been recommended as suitable guardians, see Annexure 'F'.

Counsel submitted that the applicants are responsible persons gainfully employed.

The first applicant is a co-owner of Erwin Health Care Centre in Tennessee and the second applicant as a teacher but is currently pursuing a Master's Degree in Divinity at Covenant Theological Seminary — see home study report.

Mr. Opiyo contended that the applicants have no history of any criminal record or a child abuse — see their home study.

In view of the above, court is of the view that the applicants are suitable guardians for the child.

Consequently, the application is allowed in the following terms and conditions:

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

**Margaret C. Oguli Oumo**

**JUDGE**

**6/11/09**

Present:

1. Nicholas Opiyo, counsel for the applicants
2. Nyakwebara Elizabeth — Research Assistant.