

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

FAMILY CAUSE NO. 132 OF 2009

IN THE MATTER OF HODGKINS OLIVIA (INFANT)

AND

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT OF FRANKLIN
GUILLAUME AND
DENISE JO-ANNE GUILLAUME AS LEGAL GUARDIANS OF HODGKINS OLIVIA
(AGED 1 YEAR)**

FOR: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants bring this application by Notice of Motion under Article 139(1) of the Constitution of the Republic of Uganda, 1995, sections 14, 33 and 39 of the Judicature Act Cap 13 Laws of Uganda and section 3 of the Children Act cap 59 laws of Uganda in which they are seeking for the following orders;

1. That they be appointed legal guardians of the infant, Hodgkins Olivia.
2. That the infant be allowed to migrate to Canada to live with the applicants in accordance with Canadian law.
3. That costs of the application be provided for.

The application is supported by the Statutory Declarations of the applicants dated 20/06/09; the affidavits of William Edema, the Administrator of the Home where the infant has been staying dated 20/09/09 and that of Opio Ouma, the Senior Probation Officer, Jinja District dated 20/09/09.

The grounds of the application are:

1. That the infant was abandoned by her mother.

2. That the whereabouts of the infant's mother are not known.
3. That the applicants wish to provide the infant with a home, parental love and care.
4. 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 jurisdiction over all matters in Uganda.

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

Section 14 of the Judicature Act, on similar terms grants the same jurisdiction to the court.

In the exercise of that jurisdiction, the High Court has powers to grant remedies absolutely or on such terms as it thinks fit.

See: Section 33 of the Judicature Act.

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 the age of 18 years of age.

See: Section 2 of the Children Act Cap 59

The infant here is 1 year old — see her Birth Certificate attached as Annexure 'E' to Mr. Edema's affidavit on the court record.

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 of the child and in her best interest?

Mr. Nyombi learned Counsel for the applicants submitted that the child was born on about 12/06/08 and a copy of her Birth Certificate is attached as Annexure 'E'.

That according to paragraph 6 of Edema's affidavit, he depones that the infant was abandoned by her mother Nabirye Regina who has disappeared since then. That she was abandoned at Bugembe, Budumbuli — see report of the Child and Family Protection Unit, Jinja attached to Edema's affidavit as Annexure "F".

That upon receipt of the report that the child and been abandoned, the Officer in Charge, Child and Family Protection Unit, Jinja Police station, referred the matter to the Probation office, Jinja A copy of the letter is attached as Annexure 'G'.

That on 13/08/08 the Probation and Social Welfare Officer referred infant to the Home for custody —see paragraph 4 of Opio Ouma's affidavit.

On 13/10/08, the infant was committed to the care of Welcome Home Ministries by the Family and Children Court — Jinja — a copy of the Care Order is attached to Edema's affidavit as Annexure 'H'.

Counsel for the applicant submitted that in an attempt to locate the infant's parents, her photograph was advertised in the New Vision newspaper of 14/9/09 but nobody has turned up to claim the infant — see Annexure 'J' to Edema's affidavit.

The history of the child is confirmed by the Senior Probation and Social Welfare officer in his affidavit that he is the one who referred the child to welcome Ministries.

Mr. Nyombi contended that the Home has had the custody of the child since then. That section 3 of the Children Act provides that in determining issues concerning children, the paramount consideration is the welfare of the child. That the application is made for the welfare of the infant for the following reasons:

1. The child was abandoned by his parents.
2. The whereabouts of the parents are not known.
3. That the applicants' home has been recommended as suitable for adoptive purposes as per Annexure 'D' to the first applicant's Statutory Declaration.

In view of the above, court is of the view that the grant, if made, will be for the welfare of the child and in her best interests as it will enable her to grow up in a home with loving parents and care instead of an institution.

The second issue is whether the applicants will be suitable guardians for the child?

The applicants are Canadian citizens — copies of their passports are attached as Annexures ‘A’ to their respective Statutory Declarations on the court file.

The applicants are married and a certified copy of their Certificate of Marriage is attached to Franklin Guillaume’s Statutory Declaration as Annexure “B”.

The applicants have 2 children;

1. Anika Sharon Guillaume, 5 years and;
2. Peace Franklin Guillaume, 3 years.

The applicants are gainfully employed. The first applicant is an Accountant at Deloitte and Touch L.L.P as per the notarized copy of a letter from his employers attached to his Statutory Declaration as Annexure ‘C’.

His wife, Denise is a home a maker but works part time at Edmonton Public Schools — a certified copy of the letter from the Administrator of the school is attached to her Statutory Declaration as Annexure ‘B’.

The applicants have no criminal record and their criminal clearance Certificates are attached as Annexures ‘E’ and ‘D’ to their respective Statutory Declarations.

Counsel for the applicants submitted that they are willing to provide a home, parental love and care for this child. That the application is being made for the welfare and benefit of the infant.

That the applicant’s home has been recommended as being suitable for adoptive purposes — see Annexure ‘D’ to Franklin’s Statutory Declaration.

In view of the above, court is of the opinion that the applicants are able to provide for the child and support her welfare and upbringing and she will not have difficulty integrating into their family since they already have 2 other children.

Consequently, they are suitable guardians in the opinion of court.

In view of the above, the application is allowed in the following terms and conditions:

1. The applicants **Franklin Guillaume** and **Denise Jo-Anne Guillaume** are appointed legal guardians of the child, **Olivia Hodgkins**, 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 Canadian Embassy in Nairobi, Kenya and the Ugandan Embassy in Canada.
4. The applicants are directed to obtain a Ugandan passport for the child and to renew it from time to time as required by the law.
5. The applicants are permitted to travel out of Uganda and live with the child in Canada in accordance with Canadian law.
6. The applicants are directed to register the order with the authority responsible for children and family welfare in Alberta, Canada and to file a report once every year, with the Registrar, Family Division, 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 order as to costs.

Margaret C. Oguli Oumo

JUDGE

29/10/09

Present:

1. Rebecca Mugabi, counsel for the applicants
2. The applicants
3. Nalongo Nandaula — Court Clerk.
4. Nyakwebara Elizabeth — Research Assistant.