

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 178 OF 2009

IN THE MATTER OF THE CHILDREN ACT, CAP 59

AND

IN THE MATTER OF ANTHONY MUTENYO (MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR AN ORDER FOR GUARDIANSHIP

AND

**IN THE MATTER OF AN APPLICATION BY FRANKLIN WILLIAMS AND
KIMBERLY WILLIAMS**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants bring this application under Article 139(1) of the Constitution of Uganda 1995, section 14 and 33 of the Judicature Act Cap 13, section 3 of the Children Act and paragraph 1 (b) of the First Schedule to the Children Act Cap 59, section 98 of the Civil Procedure Act Cap 71 and Order 52 r 1 of the Civil Procedure Rules S1. 71-1 in which the applicants are seeking for the following orders:-

1. That this honorable court be pleased to appoint the applicants legal guardians of Anthony Mutenyo (minor) with intentions of having him adopted at an appropriate time.
2. That the applicants be allowed to travel to the United States of America with the child with full parental rights.
3. Any other relief as this honorable court may deem fit.

The application is supported by the joint affidavit of the applicants dated the 22nd day of September, 2009, the affidavit of Pastor Anthony Bwayo dated 21/12/09 and that of the grandmother Jane Najhungu dated 19/12/09

The grounds of the application are as follows:-

1. That the minor, Anthony Mutenyo in respect of whom the order of guardianship is sought is an orphan who is currently under the care of one, pastor Anthony Bwayo, with financial assistance from the applicants.
2. That both the grandmother and pastor Bwayo can no longer afford to foster the said minor and as such do not object to the applicants being granted legal guardianship.
3. That once granted the legal guardianship order, the applicants intend to foster the child and later have him adopted.
4. The applicants have financial capability and experience to look after the said child as they have fostered and adopted Ugandan children before.
5. That this order if made will be for the best interest of the said child.

At the hearing of the application, the applicant was represented by Mr. Henry Kisalu.

Jurisdiction:

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.

In the exercise of that jurisdiction, the court has inherent powers to make such orders as are necessary in the interests of justice and to prevent the abuse of court process.

See: section 98 of the Civil Procedure Act.

The High Court under the Judicature Act has powers to make orders absolutely or on such terms as it thinks fit.

See: section 33 of the Judicature Act.

Issue no. 1 – whether the order if granted will be for the welfare and in the best interest of the child?

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

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

This is supported by the case of **In re Maria Naluggya An infant HCMA 775/97** where Justice Mukibi held that:

“section 4 of the Children Statue (now section 3) of the children Act, provides that wherever the state, a court or local authority or a person determines any question with respect to a child, the Child’s welfare shall be of paramount consideration. In the instant case, the child was an orphan and the applicant was the brother of the mother of the infant and had the means to meet the welfare requirement of the infant”.

In the instant case, the minor is an orphan, having lost both his parents, Soita Samuel and Nasimiyu Mary Soita. Annextures “G” are their Death Certificates.

The minor is currently under the care of Pastor Anthony Bwayo with the consent of the grandmother Jane Nakhungu, who has consented to this application.

According to the report of the Probation and Social Welfare Officer, Mayuge District, which is on the court record, Jane Nakhungu and pastor Bwayo can no longer look after the child as both of them do not have the means to do so.

In view of the above, court is of the opinion that the order if granted will be for the welfare of the child as the applicants are willing and able to cater for the child’s needs and will be for his welfare and in his best interests.

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

Mr. Kisalu, learned counsel for the applicants, submitted that, both applicants are American citizens aged 40 and 42 years. That they are married and copies of their Marriage Certificate and Birth Certificates are on the court file attached as Annextures “A” and “B”.

Mr. Kisalu contended that the applicants have 7 children; 4 biological children, 2 adopted from Uganda and one under legal guardianship. That they adopted 2 children Sofiat Kyabangi and Nasser Mutaka, who were at the time under the care of Pastor Bwayo. That being under privileged children, the applicants applied for guardianship to take care of the said infants and adopted them in their home.

That on the 6th of June, 2007, vide FC 40, this honorable court granted guardianship to the applicants, in respect of the 2 children - see copy of the order attached as annexure “C”.

That the 2 children were later adopted in the United States of America and are now living an amazingly good life – copies of their post placement reports show that the children have adapted very well to their American life. The Report is attached as Annexure “D”.

That later on in 2009, the Applicants applied for the guardianship of Doreen Nakhungu which was granted and she is now in the USA with the applicants – See: Annextures “D”

That Doreen had a brother, Anthony Mutenyo whom the applicants are now seeking for legal guardianship. That upon the demise of their parents, the child was left in the hands of the grandmother, who was in court and since she was not financially capable, she entrusted the child to the care of Pastor Bwayo of Walumbe Evangelical Church and he has been taking care of the child on behalf of the applicants. That Mr. Bwayo, can no longer look after the child. That when the grandmother heard of the intention of the applicants to take up his guardianship and later adopt him, she gave her consent irrevocably – see Annexure “F” to her affidavit.

Mr. Kisalu submitted that the order, if granted will be for the welfare of the child and will be respected by the government of the United States of America. See: Annexure “J” from the applicants’ Attorneys in the USA.

Counsel argued that the applicants have under gone a criminal background check and their clearance Certificates are attached as Annextures “K”, “L”, “M” and “N”.

Mr. Kisalu submitted that the applicants are financially able to look after the child and their financial statement is attached as Annexure “P”.

The first applicant is employed by Hamilton Clamont Corporative Association of Boards of Education as a Director of Information Technology where he plans and co-ordinates the day to day activities of the organization.

The second applicant is a full time house wife.

An international adoptive study was conducted on the applicants by **Grace Works Lutheran services** and they were found to be suitable guardians. See Annexure "Q". A report from the Probation and Social Welfare Officer Mayuge, also recommended them for guardianship – see report on the court file.

In view of the above, court is of the view that the applicants are capable of providing the child's welfare needs. The applicants have fostered other Ugandan children and adopted them. The child, Anthony Mutenyo will not have difficulty integrating into their family. The applicants have no criminal record and have been recommended by credible services both in the United States of America and Uganda.

Consequently, the court is of the view that the applicants are suitable guardians for the minor and the application is allowed in the following terms and conditions:-

1. The applicants **FRANKLIN WILLIAMS AND KIMBERLY WILLIAMS** are appointed legal guardians of the child, **ANTHONY MUTENYO**.
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, the Ugandan Embassy in Washington DC.
4. The applicants are permitted 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 with the child in order to fulfill their parental responsibility under Article 34(1) and(2) of the Constitution of Uganda, 1995 and sections 4 and 5 of the Children Act.
6. The applicants are directed to register the Order with the authority responsible for children and family welfare in Mason, Ohio and to make a report once every year,

regarding the state of the welfare and development of the child with the Registrar, Family Division, High Court Kampala, 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

9/2/2010

Present:

1. Mr. Kisalu, counsel for the applicants
2. Elizabeth Nyakwebara, Research Assistant