

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA**  
**FAMILY CAUSE NO. 01 OF 2010**  
**IN THE MATTER OF OPIO DOUGLAS EMMANUEL (CHILD)**

**AND**

**IN THE MATTER OF AN APPLICATION TO BE APPOINTED LEGAL GUARDIANS  
OF OPIO DOUGLAS EMMANUEL (AGED 1 YEAR) BY MICHELLE PHILIPPA  
MORALES ALAMO GUTTMANN**

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

**RULING:**

The applicant, a Danish citizen brings this application under Article 139(1) of the Constitution of the Republic of Uganda 1995, 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 orders that:-

1. Michelle Philipa Morales Alamo Guttmann be appointed legal guardian of Opio Douglas Emmanuel.
2. That the infant be allowed to migrate to Denmark to live with Michelle Philipa Alamo Morales Guttmann.

The application is supported by the Statutory Declaration of the applicant dated the 7<sup>th</sup> January, 2010, the affidavits of; Barbra Nankya, the Administrator of Sanyu Babies Home dated 24<sup>th</sup> December, 2009, that of Musunga Gerald of Kawoto, who picked the infant dated 7<sup>th</sup> January 2010, that of Salongo Mukuye, the L.C.1 Makandwa, Lumuli Zone, Kajjansi, Ssisa Sub county dated 7<sup>th</sup> January 2010 and that of Bankusha Caroline the Probation and Social Welfare Officer Central Division, Kampala District dated 6<sup>th</sup> January 2010.

The grounds of the application are briefly as follows:-

- a) That the infant was found abandoned by an unknown person in a bush at the stone quarry in Lumuli zone, Kajjansi, Ssisa Sub County.
- b) That the parents of the infant are unknown.
- c) That the infant is under the care and custody of Sanyu Babies Home.
- d) That the applicant wishes to provide the infant with a home, parental love and care.
- e) That the application is for the benefit and welfare of the infant.

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

**JURISDICTION:**

The High Court has original unlimited jurisdiction in all matters.

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

The Judicature Act, in section 14, on similar terms grants the same jurisdiction to the court.

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

**See: section 33 of the Judicature Act**

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

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

The infant here is one and a half years old and therefore a child within the meaning of the Act – see Annexure “C” to BarbraNankya’s affidavit which is a copy of the Care Order granted by the Magistrate Court at Kakiri.

**Issue No.1 – whether the grant is for the welfare and in the best interests of the child?**

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.**

Mr. Peter Nyombi, counsel for the applicant submitted that the child was abandoned in Kawoko B. Ssisa Sub county, Wakiso District in October, 2009. That the child was taken to Kajjansi Police Station by one Musunga Gerald who picked the child and reported the matter to the Chairman of the area Mr. Kyeyune Sulaiman who forwarded the matter to the Police.

Mr. Nyombi submitted that the matter was subsequently referred to Sanyu Babies Home by the Kajjansi Police station. That Sanyu Babies Home received the child on 13/10/09 – see copy of the receipt form) attached as Annexure “B” to Barbra Nankya’s affidavit and the infant was subsequently committed to Sanyu Babies Home as per Annexure “C”- a copy of the Care Order on 13<sup>th</sup> October 2009.

Mr. Nyombi contended that having failed to find the parents or guardians or claimant of the child, his photo was advertised in the New vision newspaper of 10/12/09 attached as Annexure “D” to Barbra Nankya’s affidavit, but nobody turned up claiming the child

Consequently, the opinion of the court is that granting the application is for the welfare of the child as he will have the opportunity to grow up in a home with a loving parent.

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

The applicant is a Danish citizen and a copy of her passport is attached as Annexure “A” to her Statutory Declaration.

Counsel for the applicant submitted that the applicant is employed by Scandinavian Airlines Systems-Denmark-Norway as an Air Hostess and a letter from the employer as evidence of her employment is attached as Annexure “B” to her Statutory Declaration.

The applicant was in court with her parents who will be looking after the child while the applicant is at work, by nature of her duties as an Air Hostess.

The applicant is not married. However, she is in a financial position to enable her take care of the child and provide a loving home for him as she has gone through a home study and her home

has been recommended as suitable for adoptive purposes. A copy of her Home Study is attached as Annexure “C” to her Statutory Declaration.

Counsel for the applicant submitted that, the applicant has no criminal record – see her Certificate of Good Conduct attached as Annexure “D” to her Statutory Declaration. She has not been convicted of child abuse or any criminal offence – see her home study.

Mr. Nyombi submitted that in section 3 of the Children Act, in determining any issues concerning children, the most important factor to consider is the welfare of the child and this application is for the welfare of the child.

In view of the above, court is of the view that the applicant is in a position to take care of the welfare needs of the child and to provide him with a loving and caring home in which to grow up in.

Consequently, the applicant is a suitable guardian for the child and the application is allowed in the following terms and conditions:-

1. The applicant, **MICHELLE PHILIPPA MORALES ALAMO GUTTMANN** is appointed the legal guardian of the child Opio Douglas Emmanuel with full parental rights and responsibilities.
2. The applicant is directed to register the order with the Registrar of Documents, Ministry of Justice and Constitutional Affairs, Kampala.
3. The applicant is directed to register the order with the Danish Embassy in Uganda and the Ugandan Embassy in Copenhagen.
4. The applicant is directed to obtain a Ugandan passport for the child and renew it from time to time as required by the law.
5. The applicant is permitted to travel out of Uganda with the child in order to be able to fulfill her parental rights and responsibilities under sections 4 and 5 of the Children Act and Article 34(1) of the Constitution.

6. The applicant is directed to register the order with the authority responsible for children and family welfare in Lundtoftegade, Denmark and to file a report once every year, regarding the state of welfare and development of the child with the Registrar, Family Division, High Court of Uganda 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**

**1/01/2010**

Present:

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