

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 187 OF 2010

IN THE MATTER OF M A (INFANT)

AND

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP OF M A BY
TJERK JOHANNES VAN DER WOUDE AND DINEKE VAN DER WOUDE DE
VRIES**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULIUMO

RULING:

The applicants bring 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 for orders that:-

- a) Tjerk Johannes Van Der Wouden and Dineke Van Der wooden De Vries, be appointed legal guardians of M A.
- b) That the infant be allowed to immigrate to the Netherlands to live with Tjerk Johannes van der Wouden and and Dineke Van De Wouden De Vries.
- c) Costs of the application be provided for.

The application is supported by the statutory declarations of the applicants, the affidavits of Moses Gwasaze – the biological father of the infant; of William edema – Administrator of the home, where the infant has been staying; of Buhinda Sam – the LCI chairman of Grant Road village, Old Boma Parish, Jinja district, and of Opio Ouma, the Senior Probation and Social Welfare Officer, Jinja district.

The grounds of the application are as follows:-

- a) The infant was abandoned by the mother.
- b) The biological father of the infant has failed to look after him and so surrendered him into the care of the children's home.
- c) The applicants wish to provide the infant with a home, parental love and care.
- d) The application is for the welfare and best interests of the infant.

At the hearing of the application, the applicants were represented by Mr. Peter Nyombi assisted by Agnes Nazziwa.

The High court has original unlimited jurisdiction in all matters.

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

The Judicature Act, **Section 14** grants the same jurisdiction to the Court.

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

See: **Section 33** of the Judicature Act, cap 13

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

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

Issue No. 1- whether the application is for the welfare and in the best interests of the child, MA?

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.

Mr. Nyombi, counsel for the applicant submitted that, according to the affidavit of Moses Gwasaze – the biological father of the child, the child was born on 12th March, 2005 – see birth certificate.

That the biological mother of the child, Nabulime Aisha abandoned him long ago and her whereabouts are unknown and on 6th November, 2007, the Probation Officer, Jinja District requested Welcome Home to assist the child because, the mother had abandoned the child.

Counsel submitted that the father is a peasant who has no income. Welcome home was granted a care Order to take care of the infant - see copy of the care order on the court record.

Mr. Sam Buhinda, the LC1 chairman of Grant Road village, Boma Parish, Jinja district wrote a letter to the Probation Officer requesting for assistance for the child.

The child had been staying in the Dam after being abandoned by the mother and the father could not care for it.

In view of the fact that the mother of the infant has abandoned him and the father too cannot look after him, court is of the view that, the application if granted will be for the welfare and in the best interests of the child –M A.

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

Mr. Nyombi submitted that, the applicants are Dutch citizens – see copies of their passports attached as Annexures “A” to their statutory declarations.

The applicants are married - see copy of marriage certificate – Annexure “B” to the statutory declarations. The applicants have no children.

The first applicant is gainfully employed as a Sales Manager with Olive Netherlands and the 2nd applicant a physiotherapist chemist at a University and reference letters from their respective employers are attached to their respective statutory declarations as “C” and “B”.

They will therefore be able to take care of the child’s physical needs.

Counsel submitted that, the applicants have undergone a Home Study and been recommended as suitable Adoptors— see copy of the Home Study on the court record.

Mr. Nyombi contended that, the applicants have no criminal record and a copy of their criminal clearance is attached as Annextures “E” and “B” to their respective statutory declarations.

Both applicants have been found to be mentally and physically healthy and medical certificates to that effect are attached to their statutory declarations as annextures “C” and “T”.

Counsel argued that, **section 3** of the Children Act states that, in determining matters affecting children, the most important factor to consider is the welfare of the child.

That this application is for the welfare of the child for the following reasons:-

- i) The mother of the infant abandoned him and her whereabouts are not known.
- ii) The father of the infant has failed to look after him and the infant was found at a dam by the LCI chairman.
- iii) The father surrendered the infant into the custody of the children’s home(Moses Gwasaze the father) was present in court and did not object to the guardianship.
- iv) The applicants wish to provide the infant with a home, parental love and care.

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, **Tjerk Johannes Van Der Wouden** and **Dineke Van Der Wouden De Vries** are appointed legal guardians of the child, **M A**.
2. The applicants are directed to file 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 Netherlands Embassy in Kampala and the Ugandan Embassy in the Netherlands

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 with the child
6. The applicants are permitted to adopt the child in the Netherlands so that they can fix the residence of the child permanently and the child will be able to benefit from the entitlements due to biological and adoptive children of Dutch citizens..
7. The petitioner are directed to register the order with the authority responsible for family and child welfare in the Netherlands, and file a report once every year to the Registrar Family Division, High Court, Kampala, regarding the state of the welfare and development of the child until the child is 18 years of age or until directed otherwise.
8. The court makes no order as to costs.

Margaret C. Oguli Oumo

JUDGE

25/10/2010

Present:

1. Agnes Naziwa, counsel for the applicants
2. Betty Lunkuse – court clerk
3. Oliver Nantamu – Research Assistant