

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 185 OF 2010

**IN THE MATTER OF TWINS, WAISWA JAMES AND NAKATO IMMACULATE
(INFANTS)**

AND

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS THE LEGAL
GUARDIANS OF TWINS, WAISWA JAMES AND NAKATO IMMACULATE (AGED 3
YEARS) BY SIMON CORNERLIS WEERSTAND AND TRUDIA WEERSTAND-KRAMER**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants, Simon Cornelis Weerstand and Trudia Weerstand, brings this application under **Articles 139(1)** of the Constitution of Uganda 1995, **section 14, 33 and 39** of the Judicature Act, cap 13 and **section 3** of the Children Act, cap 59 for orders that:-

- 1) Simon Cornelis Weerstand and Trudia Kramer be appointed legal guardians of Waiswa James and Nakato Immaculate.
- 2) That the infants be allowed to immigrate to the Netherlands to live with Simon Cornelis Weerstand and Trudia Weerstand-Kramer.
- 3) Costs of the application be provided for.

The application is supported by the statutory declarations of the applicants, Igenda Grace, the biological father of the infants, William Edema, the Administrator of the Home where the infants have been staying; Opio Ouma, the Senior Probation Officer, Jinja District.

The grounds of the application are as follows:-

1. The infants were abandoned by their father.
2. The biological mother of the infants is dead and there are no relatives to look after them.

3. The applicants wish to provide the infants with a home, parental love and care.
4. The application is for the welfare and best interest of the children.

At the hearing of the application, the applicants are represented by Mr. Peter Nyombi.

The High court has original unlimited jurisdiction in all matters in Uganda.

See: Section **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 High court has 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.

Under **section 33** of the Judicature Act, the court has powers to make orders absolutely or on such terms as it thinks fit.

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

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

The infants here are 3 years of age, and therefore children within the meaning of the Act.

Issue No.1 – whether the application is for the welfare and in the best interests of the children and for their welfare?

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.

Counsel for the applicants submitted that, the mother of the infant is dead – see copy of the death certificate on court record. Counsel submitted that the mother of the infants passed away immediately after delivering the twins.

Counsel submitted that, at the time she died the whereabouts of the infants' father were not known.

That a one Sarah took over the responsibility of looking after the infants – see the affidavit of the LC1 chairperson –Kigenyi Regina of Maligita village, Kawoomya parish, Annexure “A”.

Counsel for the applicants submitted that the children were subsequently transferred to M/S Welcome Home Ministries Africa because no one could look after the children. Welcome Home Ministries has been looking after the infants after a court order authorizing the Home to take care of the two twins – see copies of the court order Annexure”D” and “D2” to which William Edema’s affidavit .

Counsel submitted that eventually, the father of the infants was traced after he heard from the LC1 chairperson that the children were in the home. Counsel explained to the father who was in court the implications of the application and Adoption and he confessed in his affidavit that, he cannot look after the children.

In view of the fact that the mother of the children is deceased and the father has refused to look after them, but abandoned them and he consents to the application.

The court is of the view that granting this application will be for the welfare and best interest of the children.

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

Mr. Nyombi, counsel for the applicants submitted that, the applicants are Dutch citizens – see copies of their passports on the court.

Counsel submitted that, Simon is 31 years of age, and the 2nd applicant is 29 years of age.

He submitted that the applicants are married – see copies of the marriage certificate on the court record.

Counsel submitted that the First applicant is a businessman and the 2nd applicant is a teacher. The applicants are therefore gainfully employed and can cater for the welfare and needs of the children – see annexure “C” and “D” – evidence of their employment.

Counsel for the applicants submitted that, the applicants have been recommended as suitable for Adoptive purposes. This is supported by the Home Study report attached to the court record.

That the applicants have no criminal record – see copies of their criminal record clearance certificates of good conduct – annexure “E” & “B” to their statutory declarations on the court record.

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

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

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

1. The applicants, **Simon Cornelis Weerstand** and **Trudia Weerstand-Kramer** are appointed legal guardians of the Twins, **Waiswa James** and **Nakato Immaculate**.
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 Netherlands Embassy in Kampala and the Ugandan Embassy in the Netherlands.
4. The applicants are directed to obtain Ugandan passports for the children and renew them from time to time as required by the law.
5. The applicants are permitted to travel out of Uganda with the children and are permitted to adopt the children in the Netherlands so that they can fix the residence of the children permanently and they will be able to benefit from the entitlements due to biological and Adoptive children of Dutch citizens.
6. 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.
7. The court makes no order as to costs.

Margaret C. Oguli Oumo

JUDGE

20/10/2010

Present;

1. Mr. Nyombi Peter for the applicants

2. Betty Lunkuse, court clerk
3. Nantamu Oliver, research Assistant.