

**THE REPUBLIC OF UGANDA**

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

**FAMILY CAUSE NO. 190 OF 2010**

**IN THE MATTER OF JOSHUA ASOBOLA (CHILD)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY HAROLD  
KOEHLER AND HEATHER REBECCA KOEHLER**

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

**RULING:**

The applicants Harold Koehler and Heather Rebecca Koehler, bring this application under **Article 139(1), 34(1) (2)** of the Constitution 1995 ;**sections 14, 33, and 39** of the Judicature Act cap.13; **sections 2, 3, 4, 5 and 6** of the to the Children Act cap.59, for orders that;

1. Harold Koehler Heather and Rebecca Koehler be appointed legal guardians of the child, Joshua Asobola.
2. The applicants be permitted to immigrate with the child to their Home country, USA to complete the Adoption there.
3. The costs of the application be provided for.

The application is supported by the affidavit of the first applicant dated, 30<sup>th</sup> of July, 2010.

The grounds of the application are follows:-

1. The child Joshua Asobola was abandoned by unknown persons in abandoned plantation in Natete Factory zone, Rubaga Division, Kampala district on the 24<sup>th</sup> December, 2008.
2. The child's parents are not known and all attempts to locate them have proved futile.
3. The child is now under the Care and custody of an Open Door children's Home situated in Mengo, Kampala.

4. The child Joshua Asobola is a vulnerable child who needs parental care.
5. Other than the applicants, there is no one willing and ready to look after the child, Joshua Asobola.
6. It is in the best interests of the child that the applicants be granted legal guardianship of the child with a view to adopting him eventually.

At the hearing of the application, the applicants were represented by Mr. Isaac Mugume.

The High Court has original unlimited jurisdiction in all matters.

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

The Judicature act, **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 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

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

The infant here is about 2 years of age – (see birth certificate on the court record, Annexure “E” and is therefore a child within the meaning of the Act.

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

Counsel for the applicants submitted that, the child was abandoned in an banana plantation in Natete Factory zone, Rubaga Division on the 23<sup>rd</sup> December, 2008.

That one Deborah, who was a neighbor to Dorah, while on her way to work on the morning of that day, heard a baby crying and immediately notified her sister who in turn notified Dorah but found that the child had already been picked up by one Makyabaga Noelina and had proceeded to the area authorities to report.

That on reaching Dorah, she advised them to report the matter to the police who looked for shelter for the child, which was found at Open Door. (See a copy of her affidavit and Police statements marked, Police statements).

Counsel submitted that the child was eventually admitted to the Home on 7<sup>th</sup> January, 2009.

That in a bid to trace the parents of the child, an advertisement was placed in the papers. (See advertisement in the papers marked Advert), on the court record.

Counsel submitted that, Open Door obtained a Care Order for the child – (see Care Order on the court record)

Counsel submitted that, the Probation and Social Welfare Officer, Rubaga, has assessed the child's situation and recommended that the child be taken out of the institution and be fostered by a suitable family (see report on the court record).

Counsel submitted that, the child is vulnerable and in need of care and protection and guidance. That as she grows up into a young adult, she needs a home environment and Open Door has looked around in Uganda for a family interested in giving her a family but failed and this put him on the list for International adoptions, under the project run by Action for Children an Ngo engaged in the child rights Advocacy working with Hort International, an Adoption Agency registered in the USA (see Registration).

That Hort International receives applications from applicants interested in adopting children from Africa, assesses their suitability and matches them with the children that are identified for International Adoption through its partners in the case, the Moses Project.

Counsel contended that, **S.3** of the Children Act, provides that the welfare principles as set out in the First Schedule to the Act, that in making any decisions concerning a child, the welfare of the child is paramount and includes the child's physical, emotional and educational needs as well as the harm the child suffered or is likely to suffer as some of the consideration as the court must consider in making its decision.

Counsel argued that, based on the child's history, her vulnerability, an institution as she grows up into young adult, the eminent danger of institutionalization, and the applicants' readiness and eligibility to take on the child, it is in the best interest of the child that the application is allowed.

In view of the above, court is of the view that the application if granted will be for the welfare of the child.

**The 2<sup>nd</sup> issue is whether the applicants are suitable guardians for the child?**

Counsel for the applicants submitted that, the applicants are American citizens, see copies of their passports, annexure “A”.

That the applicants are married, (see copies of their marriage certificate annexure “B” on the court record).

That the applicants have 4 children and the court is of the view that, that can enable the child to integrate into the applicants’ family quickly (see Annexure “D”).

Counsel submitted that, the applicants have a home at 2510, Bethany Court Medford, Oregon 97504, United States of America.

Counsel submitted that, the First Applicant is employed as a Therapeutical Specialist at Pjiza Pharmaceuticals –see Annexure “C” and the 2<sup>nd</sup> applicant is a stay Home mum and they are financially stable, see Annexure “I” and “C”).

Counsel contended that, the applicants have no criminal record; see Annexure “J” and they have both been evaluated and found to be free of any diseases, see Annexure “K”.

That they have experience with Adoption as their fourth child is from Korea who has fussed well in their family.

Counsel submitted that, the applicants were assessed by Hort Intenational child’s Services (see Annexure “M”) and been found to be suitable Adoptive parents.

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, Harold Koehler and Heather Rebecca Koehler are appointed legal guardians of the child, Joshua Asobola.
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 United States Embassy in Kampala, and the Ugandan Embassy in Washington.
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 in order to fulfill their parental obligations under Article 34 of the Constitution of the Republic of Uganda, 1995 and section 4 and 5 of Children's Act cap 59.
6. The applicants are directed to register the order with the authority responsible for children and family welfare in Washington and to file a report, every year with the Registrar Family Division, High Court, regarding the state of the welfare of the child until the child is 18 years of age or until directed otherwise.
7. The applicants can adopt the child in the USA.
8. The court makes no order as to costs.

**Margaret C. Oguli Oumo**

**Judge**

**29/10/2010**

Present;

1. Mr. Isaac mugume for the applicant
2. Betty Lunkuse, court clerk
3. Oliver Nantamu, Research Assistant