

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 199 OF 2010

IN THE MATTER OF NASSUNA SUZAN AGNES (INFANT)

AND

**IN THE MATTER OF AN APPLICATION BY KATHRYN DUFFY AND MARTY DUFFY
FOR APPOINTMENT AS THE LEGAL GUARDIANS OF NASSUNA SUZAN AGNES
(AGED 1 YEARS)**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicants, Kathryn Duffy and Marty Duffy be appointed legal guardians of Nassuna Suzan Agnes, bring this application under **Article 139(1)** of the Constitution of the Republic of Uganda, **sections 14, 33 and 39** of the Judicature Act, and **sections 3, 4, 5, and 6** of the children Act, cap. 59 for orders that;

1. Kathryn Daffy and Marty Durfy be appointed legal guardians of Nassuna Suzan Agnes.
2. The infant be allowed to immigrate to the USA to live with the applicants.

The application is supported by the statutory declarations of the applicants, the affidavit of Nassanga Teopista -the maternal grandmother of the infant, Kato Lwanga Godfrey- the cousin brother to the infant, Walusimbi Mathius- the Local council 1 chairman of Fjungu Kamengo, Mpigi District, Patrick Bukenya- the Probation and social welfare Officer, Makindye Division, Kampala district.

The grounds of the application are as follows:-

1. That the infant is an orphan

2. That the mother of the infant is dead and by the time of her death, the father of the infant was not known.
3. That the infant's grandmother, Nassanga Teopista and a cousin- Kato Lwanga Godfrey have consented to the application.
4. That the applicants wish to provide the infants emotional and psychological needs and to give her parental love and care.
5. That the application is for the welfare and benefit of the infant.

At the hearing of the application, the applicant was represented by Ms. Dora Mirembe.

The High court has original unlimited jurisdiction over all matters.

See: **Article 139(1)** of the Constitution of Uganda, 1995.

The Judicature Act on similar terms granted the same jurisdiction to the court.

See: **Section 14** 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 year old and therefore is a child within the meaning of the Act. – see birth certificate on the court record.

Issue No. 1 – whether the grant will be for the welfare and best interests of the child, Nassuna Suzan Agnes?

Ms. Mirembe, counsel for the applicant submitted that, the child is an orphan, that the infant's next of kin to wit – her auntie, maternal grandmother and cousin are all not in a position to provide for her. They were all in court and expressed the same.

Counsel contended that the applicants wish to provide for the child parental love and care which her relatives cannot give her.

Counsel argued that the application is for the welfare and best interest of the infant.

Counsel submitted that, according to the affidavit of Nassanga Teopista– the grandmother of the infant, the infant’s mother, Nakiggya Teddy was her daughter.

That the late Teddy formally of Ffungu village, Kamengo subcounty, Mpigi District, passed away on 24/10/2009 – see copy of the death certificate annexure “B” to her affidavit.

That the infant was born on 1st December, 2008 – see copy of birth certificate on the court record.

Counsel contended that, the father of the infant is unknown and after the death of the mother, the grand mother took over responsibility of the child.

Counsel submitted that according to her affidavit, the grandmother is a peasant with no reliable source of income.

That the applicants who have been to Uganda before for the guardianship of Maren David Duffy granted on 29th September, 2009 learnt of the plight of the child from Kato Lwanga Godfrey, a cousin of the child who is a taxi driver.

The child was in custody of its maternal grandmother, who later handed over the baby to Kato Lwanga, the nephew and both have failed to look after the child.

The Probation and Social Welfare Officer has also recommended the application for guardianship of the child.

In view of the above, court is satisfied that, this application if granted will be for the welfare and in the best interest of the child, Nassuna Suzan Agnes.

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

Counsel for the applicants submitted that, the applicants are American citizens, see copies of passports and birth certificates.

The First applicant is 29 years of age and the 2nd applicants is 28 years of age – see annexure “A” and “B”.

That the applicants are married and a copy of their marriage certificate is annexed as “D” to their statutory declaration.

Counsel submitted that, the applicants have 2 children, Dick Duffy 2 years – see birth certificate and Betty Dicken Tumusime.

Counsel submitted that, the First applicant is employed as the Director Professional services Operations at Bigmachines, Inc, Annexure “G”, to his statutory declaration and the second applicant is a full time home maker.

That the applicants’ home has been recommended as being fit for adoptive purposes of the infant – see annexure “H” – copy of the International Home Study.

Ms. Dora Mirembe, contended that, the applicants have no criminal record and have not been convicted of any child abuse – see clearance certificates “I” and “C” to their statutory declarations and that the applicants wish to subsequently adopt the infant.

Further, that the application is for the benefit and welfare of the infant, for the following reason;

1. The infant is an orphan
2. The next of kin consents to the application as they cannot provide for the infant.
3. The applicants wish to provide for the infant a home, emotional and psychological needs, parental love and care.
4. The application if granted will be for the welfare and in the best interests of the infant.

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

Consequently, the applicants are allowed in the following terms and conditions:-

1. The applicants, **KATHRYN DUFFY** and **MARTY DUFFY** are appointed legal guardians of the child **Nassuna Suzan Agnes**.

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 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 be able to discharge their parental duties and obligations
6. The applicants are permitted to adopt the children in the U.S.A
7. The applicants are directed to register the order with the authority responsible for family and child welfare in Washington, and file a report once every year to the Registrar Family Division, High Court, and 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

20/10/2010

Present:

1. Ms. Dorah Mirembe for the applicants
2. Betty Lunkuse, court clerk
3. Nantamu Oliver, research Assistant