

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

FAMILY CAUSE NO 004 OF 2012

IN THE MATTER OF ARTICLES 139 (1), 34 (1) AND (2).

OF THE CONSTITUTION OF THE REPUBLIC OF UGANDA

AND SECTIONS 14,33 AND 39 OF THE JUDICATURE ACT CAP 13

AND

SECTION 2,3,4,5,6 AND THE FIRST SCHEDULE OF THE CHILDREN ACT ,

CAP 59

AND

IN THE SECTION 98 OF THE CIVIL PROCEDURE ACT CAP 71 & ORDER 52

RULES 1 & 3 OF THE CIVIL PROCEDURE RULES S. 171-1

AND

IN THE MATTER OF AN INFANT JANNIFER AYEDEKE (CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY

KATHLEEN MARY MARTHA MALONEY

BEFORE: THE HONOURABLE MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application for legal guardianship by one **Katheleen Mary Martha Maloney** represented by **MS/ Madaba & Co. Advocates**. It is brought by way of Notice of Motion supported by the affidavit of the applicant.

The application seek for orders that;

- 1) The applicant be appointed legal guardian of the infant **Jannifer Ayedeke** .
- 2) The applicant be authorized to obtain a Ugandan passport for the infant
- 3) The applicant be permitted to travel outside Uganda with the infant and complete the adoption process in the U.S.A The costs of the application be born by the applicant.

The grounds in support of this application are that:

- a) The infant is an orphan in urgent need of care and protection.
- b) The applicant is a suitable guardian currently fostering the infant
- c) The pre-requisite consents from the relevant authorities and individuals have been duly obtained; and
- d) It is in the best interest of the child that this application is granted.

According to the supporting affidavit deponed by the applicant, she echoes the grounds of application and says she is 37 years old and is currently resident at Bukoto Brown Flats B4 in Kampala . She is an American Citizen (See Annexure “A”) and she is currently employed by Clinton health access Initiative (CHAI) as a Malaria Diagnosis Research Technical Advisor in Kampala (Annex “C”) / and is desirous of eventually adopting the infant who lost the biological mother on 21 November 2011 while giving birth to the infant yet the biological father **Olupot Robert**, has no capacity to take care of the infant or provide for her basic needs. That the biological father has consented to the application as per annexure “E” . The applicant secured a foster care order annexure “F” and

since February 2012 she has stayed with and fostered the infant pending grant of the legal guardianship order.

The applicant reveals that she is devout Christian and undertakes to preserve the infants culture and heritage. She is mentally, emotionally and physically healthy as per medical report marked "H". The probation and Social Welfare of Mbale and Makindye Division Kampala have recommended the applicant and an adoptive Home study assessment Report is attached as annexure "G".

The applicant depones that she is financially stable earning \$ 65,000 p.a and can meet **Ayedeke's** needs (annexure "J"). As per the background checks conducted by the state of Louisiana, Interpol and Probation Officer Makindye the applicant has never committed crimes in violation of child care licencing Regulations and has no history pertaining to child abuse or neglect. The applicant intends to register the infant as a relative at the US embassy and says her home state will recognize this order if granted.

I have considered this application as a whole. I have studied the documentation in support of the application and submissions by Mr. **Madaba** learned Counsel for the applicant. I am satisfied that the infant was borne on 20.11.2011 and the biological mother died at birth due to excessive bleeding. The infant was without a mother one day after birth. The biological father, **Olupot Robert** is a peasant widower with 13 other children and 3 dependants under his care and custody. He cannot provide for the special needs of such an infant and has no capacity to do so.

As a result, the father placed the infant under the care of St Kizito Babies home, Mbale for emergency care. But an institution is not the best place to provide the needs, care and love for this infant. The applicant has been staying with the infant since January this year.

I am satisfied that the infant is in need of love care and protection which can only be provided by the applicant an idea supported by the indigent father.

Regarding whether the applicant herein is a suitable guardian, I agree with learned counsel for the applicant that since the applicant is currently fostering the infant and from the exhibited documents, there is already a bond between the child and the applicant she is suitable to be appointed a guardian.

The applicant is in gainful employment earning an annual salary of \$ 65,000. With such an income, she can provide for the infant with the basic needs and necessities of life. The applicant was evaluated by **Mutonyi Meres** the Senior Probation & Social Welfare Officer, Mbale and **Bukenya Patrick** the Probation and social Welfare officer-Makindye Kampala. These officers unanimously resolved that the applicant is capable of handling any responsibility and duties of parenting .

I agree with these officers' resolution. The applicant is mentally , emotionally and physically healthy to be able to give the child a permanent and safe environment to live in as well as love, care and protection. The applicant has no previous record of child abuse or neglect.

I also note that the applicant has secured the prerequisite consent of the relevant authorities. The biological father who has understood the implications has consented to the grant of this application because his daughter will be offered better opportunities of life such as a healthy diet, quality education, a permanent safe home and good medical facilities.

Regarding whether it is in the best interest and welfare of the child that this application, is granted, I agreed with the submission by learned counsel for the applicant.

Considering the evidence adduced and the law applicable, the welfare principle is paramount in considering the making of any decision concerning a child.

In the instant case, the applicant has expressed the desire to provide the infant with a permanent home parental love, care and protection. The biological surviving parent does not have the capacity or ability to provide the basic needs of life to the infant. As a result the child was put under the emergency care of a child institution when she was barely one month old. While in St Kizito Babies home, she frequently fell sick and was under weight. This made the infants' life vulnerable and showed that the institution was not the best environment for the upbringing of this infant at such tender age.

Given that since the foster care order was given the bond with the applicant has grown and the child's emotional and physical health has tremendously improved, I am of the view that it is in the best interest of this infant that this order is granted. I will consequently grant this application and order that:

- 1) The applicant is appointed legal guardian of the infant **Jannifer Ayedeke**.
- 2) The applicant is authorized to obtain a Ugandan Passport for the infant
- 3) The applicant is permitted to travel with the infant outside Uganda.
- 4) The applicant shall file an annual report on the progress of the infant with the Registrar High Court Mbale, the probation office Mbale and give copies to the father of the infant until she is 18 years.
- 5) The applicant may in accordance with the laws of Uganda and the USA adopt the infant in order to enable the infant enjoy full social privileges that go with it.
- 6) The Applicant shall meet the costs of this application

Stephen Musota

Judge

20/12/2012