

UGANDA / JUDGMENT

Re: An Application for Legal Guardianship of Richard Atukunda (Child) (Family Cause No. 179 of 2009) (FAMILY CAUSE NO. 179 OF 2009) [2010] UGHC 14 (10 February 2010)

[2010] UGHC 14

COURT

High Court of Uganda

BEFORE

Oguli Oumo, J

CASE / FILE NUMBER

FAMILY CAUSE NO. 179 OF 2009

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Math Cyr;}

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Math Baltic;}{\f389\fbidi \froman\fcharset163\fprq2 Cambria Math (Vietnamese);}

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{\fhiminor\31572\fbidi \fswiss\fcharset162\prq2 Calibri Tur{*\falt Century Gothic;}}

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\sbasedon0 \snext17 \slink20 \styrsid11751410 footer;}{*cs18 \additive \rtlch\fcs1 \af0 \ltrch\fcs0
\sbasedon10 \slink16 \slocked \ssemihidden \styrsid11751410 Header Char;}{*cs20 \additive
\rtlch\fcs1 \af0 \ltrch\fcs0 \sbasedon10 \slink17 \slocked \styrsid11751410 Footer Char;}}
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\par {\rtlch\fcs1 \ab\af0\afs24 \ltrch\fcs0 \b\af0\fs24\insrsid475299\charrsid273908 IN THE HIGH
COURT OF UGANDA HOLDEN AT KAMPALA

\par FAMILY CAUSE NO. 179 OF 2009

\par IN THE MATTER OF THE CHILDREN ACT CAP 59

\par AND

\par IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP OF RICHARD
ATUKUNDA (CHILD) BY JAMES KEITH RICHARDS AN){\rtlch\fcs1 \ab\af0\afs24 \ltrch\fcs0
\b\af0\fs24\insrsid6098820\charrsid273908 D){\rtlch\fcs1 \ab\af0\afs24 \ltrch\fcs0
\b\af0\fs24\insrsid475299\charrsid273908 SALEM RAYYE MILLER

\par BEFORE: {\rtlch\fcs1 \ab\af0\afs24 \ltrch\fcs0 \b\af0\fs24\ul\insrsid475299\charrsid273908
HON. LADY JUSTICE MARGARET C. OGULI OUMO

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\f0\fs24\insrsid475299\charrsid273908 The applicants, citizens
of the United State of America, bring this application under Article 139(1) of the Constitution of
Uganda, 1995, Section 14 of the Judicature Act, {\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
\f0\fs24\insrsid1581371\charrsid273908 C){\rtlch\fcs1 \af0\afs24
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The application is supported by the affidavit of James Keith Richards and Salem Raye Miller dated the 4th of November, 2009.

The grounds of the application are briefly as follows:-

That the child was abandoned and the efforts to trace for the child's parents and relatives have proved futile.

That the child being in need of care and protection was committed to the care of Ibanda Babies Home.

That the applicants are ready and willing to provide the child with love, warmth and a healthy family environment and eventually adopt the child in the United States of America.

That the applicants have been found to be suitable adopti

ve parents by the Probation and Welfare Officer in their country of origin.

That it is in the best interests of the child that the applicants be granted legal guardianship over him.

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

Jurisdiction:

The High Court has original unlimited jurisdiction over all matters.

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Jurisdiction:

The High Court has original unlimited jurisdiction over all matters.

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See: Article 139(1) of the Constitution.

Section 14 of the Judicature Act.

See: Section 14 of the Judicature Act.

In the exercise of that jurisdiction, the High Court has inherent powers to make such orders as are necessary in the interests of justice and to prevent the abuse of court process.

to prevent the abuse of court process.

See: section 98 of the Civil Procedure Act.

The High Court under section 33 of the Judicature Act has powers to grant remedies absolutely or on such terms as it thinks fit.

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

d) whether the grant will be for the welfare and in the best interests of the child ?

Under the provisions of the Children Act, in making any decision concerning a child, the welfare is of paramount consideration.

Section 3 and Paragraph 1 of the First Schedule to the Children Act, in making any decision concerning a child, the welfare is of paramount consideration.

of the First Schedule to the Children Act, in making any decision concerning a child, the welfare is of paramount consideration.

Counsel for the applicants, Mr. Obiro Ekirapa, submitted that the child was found abandoned in Kyamuhunga, Kasese

Bushenyi road by a boda boda rider after a heavy down pour,

lying in a paddle of muddy water. That the boda boda cyclist took the child to the Probation Officer Bushenyi District

Local Government at the time called Tumugirizi Advise

. That the Probation Officer tried in vain to trace the relatives/parents of the child and on 4th

\f0\fs24\insrsid12074253\charrsid273908 April 2008, he requested the warder of Ibanda Babies Home to admit the child as being in need of care and }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid12607633\charrsid273908 p}\rtlch\fcs1 \af0\afs24

\ltrch\fcs0 \f0\fs24\insrsid12074253\charrsid273908 rotection \endash a copy of the admission from }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid12607633\charrsid273908 to }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid12074253\charrsid273908 Ibanda Babies Home is attached }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid12607633\charrsid273908 on the Court file. }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid10837139\charrsid273908

\par }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid12074253\charrsid273908 Mr. Ekirapa su} \rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid9207359\charrsid273908 bmitted that further efforts }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid12074253\charrsid273908 to trace the parents of the child were extended to the Orum}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid10837139\charrsid273908 ur}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid12074253\charrsid273908

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\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid10837139\charrsid273908 No one has turned up claiming the Child.}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid610579\charrsid273908 } \rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid12540864\charrsid273908 That other relatives}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid610579\charrsid273908 of the child are unknown as the child was abandoned. Since then}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid12540864\charrsid273908 ,}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid610579\charrsid273908 the child has been under the care of Ibanda }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid12540864\charrsid273908 B}\rtlch\fcs1

\af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid610579\charrsid273908 abies Home, but the services of the home are right now }}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid10837139\charrsid273908 too }}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

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needs. That the applicants have expressed the willingness to take care of the child.}}\rtlch\fcs1
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\par }}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid610579\charrsid273908 In view of the above, court is of the view that the grant if made will be in the best interests of the child and for his welfare.

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}\rtlch\fcs1 \ab\af0\afs24 \ltrch\fcs0 \b\f0\fs24\ul\insrsid1731478\charrsid273908 nd issue is whether the applicants are suitable guardians for the child?}}

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\par }}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid10252166\charrsid273908 Mr. Ekirapa contended that the applicants are American }}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
\f0\fs24\insrsid9207359\charrsid273908 citizens.}}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

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\f0\fs24\insrsid6834275\charrsid273908 attached as }}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
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\par That the applicants are married and a copy of their }}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
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\f0\fs24\insrsid10252166\charrsid273908 arriage }}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid6834275\charrsid273908 C}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
\f0\fs24\insrsid10252166\charrsid273908 ertificate is attached as Annexure \93B\94.

\par The 1}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\super\insrsid10252166\charrsid273908 st}
\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid10252166\charrsid273908 applicant }\rtlch\fcs1
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holds a Bachelor of Music Degree \endash His Certificate is attached as Annexure \93D\94. He}
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\af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid6834275\charrsid273908 at Warren Local School District as an }\rtlch\fcs1
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Elementary teacher. A reference letter from }\rtlch\fcs1 \af0\afs24

\ltrch\fcs0 \f0\fs24\insrsid10252166\charrsid273908 his }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
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\f0\fs24\insrsid9207359\charrsid273908 Annexure \93C\94.

\par The second applicant is a Nanny. A }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
\f0\fs24\insrsid12655066\charrsid273908 reference letter from her employers is attached as
Annexure \93J\94 to her affidavit.

\par }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid6098820\charrsid273908 The applicants have
undergone a Home study}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
\f0\fs24\insrsid12655066\charrsid273908 attached as }\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid6098820\charrsid273908 Annexure \93F\94 and the report confirms that the
applicants are fit and proper persons to cater for the child.

\par Mr. Ekirapa submitted that the applicants have undergone a criminal record check and
according to the}\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid10837139\charrsid273908 ir}
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\f0\fs24\insrsid15678882\charrsid273908 Annextures \93}\rtlch\fcs1

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\f0\fs24\insrsid6098820\charrsid273908 , they have no criminal \}{\rtlch\fcs1

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\par Learned Counsel submitted \}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
\f0\fs24\insrsid6098820\charrsid273908 that the applicants are in good health\}{\rtlch\fcs1
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\ltrch\fcs0 \f0\fs24\insrsid6098820\charrsid273908 Annexure\}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
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\f0\fs24\insrsid6098820\charrsid273908 \94 and \93\}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
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\f0\fs24\insrsid15678882\charrsid273908 are their good medical reports\}{\rtlch\fcs1 \af0\afs24
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\par \}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid15678882\charrsid273908 He further
submitted \}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid7893549\charrsid273908 that the
\}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid6098820\charrsid273908 United States government will respect the order and allow
the child to immigrate to the US if the application is granted to them.

\par In view of \}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid15678882\charrsid273908 the
above\}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid6098820\charrsid273908 , court is of the
view that the applicants are suitable guardians for the child.

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

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\af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid7415937\charrsid273908 ppointed legal guardians of }

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ATUKUNDA }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid15678882\charrsid273908 with full parental rights and responsibilities}{\rtlch\fcs1

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pplicants are directed to register the order with the Registrar of Documents, Uganda Registration Services Bureau, Ministry of Justice and Constitutional Affairs, Kampala.

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\ltrch\fcs0 \f0\fs24\insrsid7415937\charrsid273908 pplicants are directed to register the order with United States Embassy}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0 \f0\fs24\insrsid15678882\charrsid273908 in Kampala}{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0

\f0\fs24\insrsid7415937\charrsid273908 and the Ugandan Embassy in Washington D. C.

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applicants are directed to obtain a Ugandan passport for the child and to renew it from time to time as required by the law.

The applicants are permitted to travel out of the country with the child so that they can fulfill their parental rights and responsibilities within the terms of Sections 4 and 5 of the Children Act and Article 34(1) and (2) of the Constitution of Uganda.

The applicants are directed to register the order with the authority responsible for children and family welfare in Anthers, Ohio and to file a report once every year regarding the state of welfare

and development of the child to the Registrar Family Division, High Court

, Kampala beginning 31

st June 2010

until the child is 18 years of age

or until directed otherwise.

The court makes no order as to costs.

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\b\f0\fs24\insrsid7415937\charrsid273908 Margaret C. Oguli Oumo

\par JUDGE

\par 11/2/2010

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\f0\fs24\insrsid11751410\charrsid273908 Mr. }{\rtlch\fcs1 \af0\afs24 \ltrch\fcs0
\f0\fs24\insrsid7415937\charrsid273908 Ekirapa , counsel for the applicants

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Research Assistant

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{*\colorscememapping 3c3f786d6c2076657273696f6e3d22312e302220656e636f64696e673d225554462d3822207374616e64616c6f6e653d22796573223f3e0d0a3c613a636c724d

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6e22206267313d226c743122207478313d22646b3122206267323d226c743222207478323d22646b322220616363656e74313d22616363656e74312220616363

656e74323d22616363656e74322220616363656e74333d22616363656e74332220616363656e74343d22616363656e74342220616363656e74353d22616363656e74352220616363656e74363d22616363656e74362220686c696e6b3d22686c696e6b2220666f6c486c696e6b3d22666f6c486c696e6b222f3e}

{*{\latentstyles\lsdstimax267\lsdlockeddef0\lsdsemihiddendef1\lsdunhideuseddef1\lsdqformatdef0\lsdprioritydef99{\lsdlockedexcept \lsdsemihidden0 \lsdunhideused0 \lsdqformat1 \lsdpriority0 \lsdlocked0 Normal;

\lsdsemihidden0 \lsdunhideused0 \lsdqformat1 \lsdpriority9 \lsdlocked0 heading 1;\lsdqformat1 \lsdpriority9 \lsdlocked0 heading 2;\lsdqformat1 \lsdpriority9 \lsdlocked0 heading 3;\lsdqformat1 \lsdpriority9 \lsdlocked0 heading 4;

\lsdqformat1 \lsdpriority9 \lsdlocked0 heading 5;\lsdqformat1 \lsdpriority9 \lsdlocked0 heading 6;\lsdqformat1 \lsdpriority9 \lsdlocked0 heading 7;\lsdqformat1 \lsdpriority9 \lsdlocked0 heading 8;\lsdqformat1 \lsdpriority9 \lsdlocked0 heading 9;

\lsdpriority39 \lsdlocked0 toc 1;\lsdpriority39 \lsdlocked0 toc 2;\lsdpriority39 \lsdlocked0 toc 3;\lsdpriority39 \lsdlocked0 toc 4;\lsdpriority39 \lsdlocked0 toc 5;\lsdpriority39 \lsdlocked0 toc 6;\lsdpriority39 \lsdlocked0 toc 7;

\lsdpriority39 \lsdlocked0 toc 8;\lsdpriority39 \lsdlocked0 toc 9;\lsdqformat1 \lsdpriority35 \lsdlocked0 caption;\lsdsemihidden0 \lsdunhideused0 \lsdqformat1 \lsdpriority10 \lsdlocked0 Title;\lsdpriority1 \lsdlocked0 Default Paragraph Font;

\lsdsemihidden0 \lsdunhideused0 \lsdqformat1 \lsdpriority11 \lsdlocked0 Subtitle;\lsdsemihidden0 \lsdunhideused0 \lsdqformat1 \lsdpriority22 \lsdlocked0 Strong;\lsdsemihidden0 \lsdunhideused0 \lsdqformat1 \lsdpriority20 \lsdlocked0 Emphasis;

\lsdsemihidden0 \lsdunhideused0 \lsdpriority59 \lsdlocked0 Table Grid;\lsdunhideused0 \lsdlocked0 Placeholder Text;\lsdsemihidden0 \lsdunhideused0 \lsdqformat1 \lsdpriority1 \lsdlocked0 No Spacing;

\lsdsemihidden0 \lsdunhideused0 \lsdpriority60 \lsdlocked0 Light Shading;\lsdsemihidden0 \lsdunhideused0 \lsdpriority61 \lsdlocked0 Light List;\lsdsemihidden0 \lsdunhideused0 \lsdpriority62 \lsdlocked0 Light Grid;

\lsdsemihidden0 \lsdunhideused0 \lsdpriority63 \lsdlocked0 Medium Shading 1;\lsdsemihidden0 \lsdunhideused0 \lsdpriority64 \lsdlocked0 Medium Shading 2;\lsdsemihidden0 \lsdunhideused0 \lsdpriority65 \lsdlocked0 Medium List 1;

\lsdsemihidden0 \lsdunhideused0 \lsdpriority66 \lsdlocked0 Medium List 2;\lsdsemihidden0 \lsdunhideused0 \lsdpriority67 \lsdlocked0 Medium Grid 1;\lsdsemihidden0 \lsdunhideused0 \lsdpriority68 \lsdlocked0 Medium Grid 2;

\lsdsemihidden0 \lsdunhideused0 \lsdpriority69 \lsdlocked0 Medium Grid 3;\lsdsemihidden0
\lsdunhideused0 \lsdpriority70 \lsdlocked0 Dark List;\lsdsemihidden0 \lsdunhideused0
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\lsdunhideused0 \lsdqformat1 \lsdpriority30 \lsdlocked0 Intense Quote;

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\lsdsemihidden0 \lsdunhideused0 \lsdpriority68 \lsdlocked0 Medium Grid 2 Accent 1;

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\lsdsemihidden0 \lsdunhideused0 \lsdpriority73 \lsdlocked0 Colorful Grid Accent 1;
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\lsdsemihidden0 \lsdunhideused0 \lsdpriority73 \lsdlocked0 Colorful Grid Accent 4;
\lsdsemihidden0 \lsdunhideused0 \lsdpriority60 \lsdlocked0 Light Shading Accent 5;

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\lsdsemihidden0 \lsdunhideused0 \lsdpriority66 \lsdlocked0 Medium List 2 Accent 5;

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