

**THE REPUBLIC OF UGANDA**

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

**FAMILY DIVISION**

HCT-00-FD-FC-0025-2009

IN THE MATTER OF MARY GIMONO MIREMBE AN INFANT

AND

IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY JIMMY  
WAYNE RENSLOW AND GAYLA DEONNE RENSLOW

**BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE**

**RULING**

1. The applicants, a married couple, are seeking an order for legal guardianship in respect of Mary Gimono Mirembé, an infant. Mary was born on the 4<sup>th</sup> August 2008 to Scovia Galenda Gimono and an undisclosed father. The infant's mother Scovia died on the 17<sup>th</sup> August 2008 barely 2 weeks from the delivery of the infant.
2. Ann Nabugidongo, sister to the deceased mother of the infant took over the care for the infant until the infant was committed to the care of Caroline Jacobsen of Good Shepherd Fold Orphanage of Mukono District on the 1<sup>st</sup> December 2008 by the Family and Children Court of Mukono. Both Ann and Caroline support the applicants in their application for Guardianship.

3. The applicants are citizens of United States of American who reside at 6400 Cardinal Wood Drive, Greensboro, NC 27410, USA. They have 3 biological children aged 13, 12 and 10 years respectively. Jimmy is a Pastor at Grace Community Church, Greensboro, North Carolina. Gayla is a stay at home Mom who home schools her son. She does some part time work.
4. The applicants come well recommended. An international adoptive home study conducted by American World Adoption finds the applicants well suited to carry out an international adoption. They are financially able to take on another child. They have no known criminal record in the USA.
5. The applicants apply for legal guardianship under Article 139(1) of the Constitution, Sections 14 of the Judicature Act, Sections 2, 3, 4 and 5 of the Children's Act, Section 98 of the Civil Procedure Act and Order 52 Rules 1 and 3 of the Civil Procedure Rules. It is clear that the applicants' intention is to adopt the infant in question and intend to do so in the USA in case this application decides. Given that scenario I would have been inclined to find that the applicable law should be Section 46 of the Children Act which deals with inter-country adoption.
6. However, the Court of Appeal, in the case of *In the Matter of Francis Palmer an Infant*, Civil Appeal No. 32 of 2006, and in the case of *In the matter of Howard Amani Little, an infant*, Civil Appeal No.33 of 2006 held that this court has jurisdiction to grant orders of legal guardianship by a 2 to 1 decision. What that decision does not make clear are in what circumstances should a court issue that kind of order, especially in cases that are akin to inter country adoptions.
7. In that the decision the Court of Appeal was divided as to when and how the High Court may grant orders of legal guardianship in the circumstances where the applicants were foreign applicants resident outside this country and whose intention of applying for legal guardianship was to take the children outside this jurisdiction.
8. One of the judges was of the view that legal guardianship was to be resorted to where the applicants could not fulfil the conditions under Section 46 of the Children's Act. Another judge disagreed. Though in agreement that this court had jurisdiction to grant orders of legal guardianship, the judge stated that it should not be applicable where the applicants were foreign applicants who did not qualify under Section 46 of the Children's Act. To allow such applicants to obtain orders of legal guardianship, while

they did not qualify to adopt the children under the Act, would be an infringement of the Act. The third judge did not agree that the High Court had the power to grant orders of legal guardianship, such power being only available to Family and Children's Court, by the issue of care orders and appointment of Foster Parents.

9. The Court of Appeal decision, given the conflicting legal positions taken by each judge, provides no authoritative guidance as to how this court should exercise its power in granting orders of legal guardianship. In the result perhaps I must turn to simply one question. Is the grant of such an order in the best interest of the infant?
10. The mother of the infant is dead. The father of the infant is unknown. No relative of the infant was able to care for the infant. The infant is being cared for by one Caroline Jacobsen, apparently in an institution, Good Shepherd Fold Orphanage. Institutional care is not the best environment for raising a child. In any case it is only intended to be a temporary fix until a permanent solution can be found. Secondly it is clear that there is no material governmental support, be it local or central government, for children in distress such as the infant in question.
11. What is needed for this infant and many other infants in her position is a home with loving parents and a family. This infant is being provided an opportunity to grow up in a loving family environment to be provided by the applicants. There is no offer from a local family to take care of this infant and provide a home for her. Neither is governmental support available for the care and upkeep of the infant with a local family. I find therefore that exceptional circumstances exist for an order to be made in favour of non resident aliens who are the only viable alternative.
12. I am satisfied that it is in the infant's best interests to grant rather than refuse this order. Accordingly I grant an order of legal guardianship of Mary Gimono Mirembe to the applicants effective immediately.

Signed, dated and delivered at Kampala this 21<sup>st</sup> day of May 2009

FMS Egonda-Ntende

Judge