

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY CAUSE NO. 244 OF 2010
IN THE MATTER OF FAITH KOMUGISHA (INFANT)
AND
IN THE MATTER OF AN APPLICATION TO BE APPOINTED LEGAL
GUARDIAN OF
FAITH KOMUGISHA BY ERIC JEFFREY DIRKS AND EMILY LOUISE
ENGELBERT DIRKS.
BEFORE: HON. MR JUSTICE B.KAINAMURA

Application-Notice of motion-legal guardianship-article 139(1) of the constitution-section 14 of the judicature act,sections 2,3,4,5 and 6 of the children's act-Order 59 and 52 rules 1 and 3 of the civil procedure rules.

RULING

This is an application for Legal guardianship under Article 139(1) of the Constitution of the Republic of Uganda, 1995, Section 14 of the Judicature Act cap. 13, Sections 2, 3, 4, 5 and 6 of The Children Act cap. 59 and Order 52 Rules 1 & 3 of the Civil Procedure Rules SI 71-1.

The application is by Notice of Motion and seeks for Orders that:-

- a) Eric Jeffrey Dirks and Emily Louise Engelbert Dirks be appointed Legal guardians of FAITH KOMUGISHA.
- b) The applicants be allowed to immigrate with the infant to the USA where they reside so as to fulfill their parental responsibilities.
- c) Costs of this application be provided for.

The application is based on the grounds that;

1. The child's presumed father has denied paternity and the child's mother is mentally unstable and does not have the capacity to cater for the child's needs.
2. The child being in need of care and protection was committed to the care of Good Shepherd Fold, an n Organization providing child care.
3. The applicants are ready and willing to provide the child with love, warmth and a healthy family environment.
4. The applicants have been found to be suitable parents by the probation and welfare officers in their country of origin.
5. It is in the best interests of the child that the applicants be granted legal guardianship over him.

The application is supported by the affidavits of the applicants and the affidavit of Mary Nagujja, that of Claudia Arango – the Director at Good Shepherd Fold where the child was being taken care of and the report of the probation officer of Mukono District.

The documents mentioned above, which are on court record attest to the facts outlined hereunder;

The child – FAITH KOMUGISHA, now aged 4months was born on the 19th July 2010 to a one Okenyi Joseph and Nakanwagi Magaret. The said Okenyi has however denied paternity of the child. The child's mother is mentally ill and she abandoned the child- Faith Komugisha at a tender age of 3weeks with the child's grandmother. The paternal grandmother – Nagujja Mary started caring for the child. The mother's mental condition has worsened and she runs away from home. At the time of this application, no one knows the whereabouts of the child's mother.

Nagujja Mary failed to provide for the basic needs of the child, and with the help of local councilors, she requested that the child be admitted to Good Shepherd Fold. The child was then admitted to the said organization on the 10th August 2010. Good Shepherd Fold took out a Care Order on the 17th November 2010 by which the child was formally committed to the care of the home. The child's paternal grandmother has consented to the application. The probation officer Mukono district recommends that if this order is granted, it shall be in the best interests of the child.

The applicants are adult American Citizens and they got married on the 22nd November 2003 in the city of Rochester, Minnesota. The applicants have two adopted children namely; Isaac Eric Dirks aged 4 years and Luke Steven Dirks aged 1 year.

The applicants got to know about the plight of the child from Claudia Arango of Good Shepherd Fold.

Eric Jeffrey is employed as a teacher with Rochester Public Schools while Emily is a stay home mum. The applicants' annual income totals up to \$ 50,304. According to the Home Study report about the Applicants, they have adequate health insurance that will provide coverage for an adopted child. The applicants were subjected to criminal record checks by the state of Minnesota, Department of Human Services and were found with no criminal record. The applicants are free from any communicable, physical or mental impairment that could endanger the child. The home study report recommends the applicants as suitable adoptive parents.

I am satisfied that the applicants on the facts available to me are suitable legal guardian of the child.

I am satisfied that it is in the infant's best interest to grant the application and accordingly, the application by Eric Jeffrey Dirks and Emily Louise Dirks to be appointed Legal guardian of FAITH KOMUGISHA is granted.

The appointed legal guardians are permitted to immigrate with the child to the United States of America in order to fulfill their obligations as legal guardians.

The applicants are ordered to submit a report on the state and welfare of the child to the Registrar Family Division of the High Court of Uganda at Kampala every six months until the child is 18 years old or until directed otherwise.

The applicants will pay the costs of this application.

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B. KAINAMURA

JUDGE

11.01.2011