

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT MBALE
HCT-04-CV-FC-0004-2012
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 SECTION 98 OF THE CIVIL
PROCEDURE ACT AND ORDER 52 RULES 1 AND 3 OF THE
CIVIL PROCEDURE RULES
IN THE MATTER OF FRANCIS SAMUEL [CHILD]
AND
IN THE MATTER OF AN APPLICATION FOR LEGAL
GUARDIANSHIP BY AARON WADE TOLSON AND LISA
LOCKWOOD WEIR TOLSON
BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

RULING

Through M/S Nkwanga & Partners Advocates the applicants to wit **Aaron Wade Tolson** and his wife **Lisa Lockwood Wier Tolson** filed this application for legal guardianship by way of Notice of Motion. The applicants have sought for orders from this court that:

- 1. They be appointed legal guardians of the child. Francis Samuel.***

2. *They be permitted to travel with the child outside Uganda to fulfill their parental obligations.*
3. *Costs of the application be provided for.*

The grounds of the application are contained in the numerous affidavits of both the applicants and the affidavits of

- Sister **Mary Lunyolo** the Administrator of St. Kizito Babies Home where the Child is being taken care of
- **Chelimo Lovisa** the Officer in Charge Child and Family Protection Unit Mbale Police Station to whom the abandonment was reported .
- **Wangoda Ronald** the person who found the abandoned child
- **Mpyangu Sylvester** parish Secretary Lady Fatima Catholic Church Gangama
- **David Masaba** the Catechist of our Lady of Fatima catholic church Gangama.
- **Kageni anne Musooli** a teacher St. Pauls College Mbale and Chairperson L.C I College Cell the area where the Child was picked from
- **Meresi Mutonyi** the Senior Probation and Social Welfare Officer Mbale District.

The facts about the child that come out clearly are that:

1. The Child **Francis Samuel** was found abandoned at Our Lady of Fatima Church Gangama by **Wangoda Ronald**, a young man who stays and works at the Church parish.
2. **Wangoda** made inquiries to trace the child's relatives around the Church but no one knew the child.

3. Efforts to trace the child's parents or relatives have proved futile.
4. The applicants wish to provide the infant with a home, parental care and love
5. That the application is for the welfare and benefit of the infant
6. Besides the applicants, it is deponed severally that there is no one willing and ready to offer the child a permanent loving home and family.
7. Currently the child is in an Institution, St. Kizito Babies Home Gangama.
8. That the child is in need of parental love and care.
9. That it is in the best interest of the child that this application be granted.

The applicants are husband and wife and American citizens. Aaron **Wade Tolson** 37 years was borne in Jackson Ville Florida while 33 years old **Lisa Lockwood Weir Tolson** was borne in Charlotte North Carolina USA. The couple have three biological daughters. The husband is a Pastor of High School students at Look Out Mountain Presbyterian Church in Look Out Mountain Tennessee. The wife is a housewife who takes care of the household chores and the Children. She teaches their eldest daughter at home.

I have considered this application as a whole. I have meticulously studied the documentation on record, the law applicable and the written submissions by learned counsel for applicants. It is trite that in all matters pertaining to children, it has always been a principle of court to look at the welfare of the child as of paramount consideration. While determining this, the suitability

of the applicants is gauged on the principle that court has to be satisfied that the applicants are capable of providing and sustaining care for the child and offer love and affection.

I am satisfied that this child is in need of care and protection in view of the background outlined herein. I am also satisfied that apart from the applicants, no one is willing to offer support to this child since no parent, or relative has been traced to date. It is only the applicants who are willing to offer support care, love and shelter to this child. I have also found the applicants suitable persons to be appointed legal guardians because both are mentally, psychologically and emotionally stable. They have parenting skills and have no criminal records. They are healthy and financially stable with stable employment. These attributes are contained in the Hope for Adoption report and the home study report filed with this application.

The child is of tender years under the age of 18, he is so vulnerable to stay in a temporary institutional home at St. Kizito Babies home Gangama. It is therefore in the best interest of this infant that this order is granted in line with Section 3 and paragraph 1 (b) of the first schedule to the Children Act.

I consequently grant this application on the following terms;

- a) The appointed legal guardians are permitted to emigrate with the child to their home Country USA in order to fulfill their obligations as legal guardians.
- b) The legal guardians will obtain a Ugandan passport for the child in accordance with the law.
- c) The Legal guardians are directed to register this order with the state authority responsible for Children and Family Welfare in the USA.

- d) The legal guardians will file a report once every year regarding the state of welfare and development of the child with the Registrar High Court Registry, Mbale and the probation Office Mbale until the child is 18 years old.
- e) This order shall be registered with the USA Embassy in Kampala and the Uganda Embassy in Washington DC.
- f) Subject to the law, the legal guardians may complete the adoption process in their home country.
- g) The legal guardians shall meet the costs of this application

Stephen Musota

Judge

27.9.2012