

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

AT MBALE

FAMILY CAUSE NO. 0003/2012

IN THE MATTER OF AN INFANT, MOSES MUKISA

AND

IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP

BY RICHARD ISAAC KOHLBACHER AND TARA LEE KOHLBACHER

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application by way of Notice of Motion under the cited law for appointment of the applicants to wit;

- 1. Richard Isaac Kohlbacher**
- 2. Tara Lee Kohlbacher**

as legal guardians of the infant, **Moses Mukisa**.

The application is supported by the affidavits of both applicants, that of the Senior Probation and Social Welfare Officer of Mbale District **Mutonyi Meresi**, and the

affidavits of **Ronald Wakhooli** a maternal grandfather, **Jenifer Simiyu** a maternal grandmother and **Ann Khakasa** a great aunt to the infant.

The grounds of this application are that:

- (i) **Moses Mukisa** the infant is an orphan in urgent need of love care and protection.
- (ii) The applicants are suitable guardians to the infant with the capacity to provide the infant with an opportunity to live in a permanent home with love, care and protection.
- (iii) The applicants were on the 16th February 2012 duly appointed foster parents to **Moses Mukisa** by the Family and Children's Court Mbale.
- (iv) The infant is currently under the care and custody of the applicants.
- (v) It is in the best interests and welfare of the infant that this application be granted.

Having examined the application as a whole and the affidavits and annexures accompanying the application, and having seen in court;

- **Mukisa Moses** the infant,
- The foster parents who are the applicants,
- The Senior Probation and Social Welfare Officer Mbale.

And after a thorough consideration of the submissions by **Mr. Madaba** learned counsel for the applicants, I will go ahead and determine the pertinent issues which will help determine this application.

The issues are:-

- a) Whether the grant of this application is in the best interest of the child.

- b) Whether the applicants are suitable persons to be appointed legal guardians for **Moses Mukisa**.
- c) Whether the adoption of the infant child can be completed in the United States of America.

Issue I:

Before resolving this issue I will give the background to this application as follows:

The applicants are husband and wife who live in America at 8705 Clover, Meadow Drive, Dallas, Texas 75243 USA. Through 'Holden Uganda' a charity organization operating in Uganda, they were informed about a possible adoption case involving the infant **Moses Mukisa** an orphan born on 25th January 2012 at Magale Hospital whose teenage mother died during birth. At the time of her death **Mukisa's** father was unknown and is still unknown to date. The infant was left in the hands of grandparents who were financially constrained. They handed the baby to his great aunt **Ann Khakasa** for temporary custody who in turn was unable to cater for the child because she can not afford to provide the basic necessities for survival of the infant. After realizing that **Mukisa's** life was in danger she approached the staff of "Holden Uganda" for help. Since the latter had knowledge that the applicants had interest in adopting any needy children in Uganda, they were contacted about the prospects of adopting **Mukisa**. This led the applicants to travel to Uganda for the purpose.

As is required by the law of this country, the applicants obtained a Foster Care Order from the Family and Children Court Mbale on 16th February 2012. Since then the child has been in custody of the applicants in their temporary home in Kanginima Hospital, Pallisa District.

In the report by the Senior Probation and Social Welfare Officer Mbale which is annexed as 'A' to her affidavit in support, she recommended that the applicants be allowed to become legal guardians of **Moses Mukisa** since they have the capacity to offer him opportunity to live in a permanent home with love, care and protection.

The grandparents and great aunt are also agreeable to this arrangement.

In such circumstances, I am of the considered view that it is in the best interest and welfare of this Child that this order is made. The applicants are in a better position to provide the infant with a better future and basic needs since they can afford to offer the same. They can afford to offer good education, shelter, medication and love. They have demonstrated to court that they are able and willing to offer the same to the infant. I will therefore answer this issue in the affirmative.

Issue 2:

Since taking over the care of **Moses Mukisa**, his health and general condition has improved. The applicants have submitted to this court a wealth of documentation recommending them as suitable guardians with the capacity to raise **Moses Mukisa** in a loving environment. The applicants are physically, mentally and emotionally healthy. They are financially stable. Their suitability is vouched by the Senior Probation and Welfare Officer who interviewed them extensively and visited their temporary home in Kanginima. The applicants are a married couple. They are in gainful employment. They have no criminal record and their home study report recommends them as suitable alternative parents. I am therefore satisfied that the applicants are suitable persons to be appointed legal guardians to **Moses Mukisa**.

Issue 3:

I agree with the submissions by **Mr. Madaba** that for this child to enjoy all rights in the applicants' home country, it is important that they be allowed to travel with the child to USA from where they may complete the adoption process if need be and in accordance with the law in that country. The known blood relatives of this

Child are agreeable and nobody has come forth with representations to the contrary despite announcements put on Radio and print media calling for objections or volunteers to look after the child. This order is equally granted.

Consequently, I will order that the applicants be appointed legal guardians to **Moses Mukisa**. They will undertake all duties, obligations and liabilities for the infant which include but is not limited to upbringing, basic needs such as shelter, clothing, food, medical care and full protection.

The legal guardians may:

- a) Travel outside Uganda in company of the infant where they can perform their duties and meet their obligations as Legal Guardians.
- b) The legal guardians may apply to adopt the infant in the USA so that he may benefit from the privileges accorded to a biological child.
- c) This order shall be registered with the authority responsible for Children here and in the State of Texas, USA and an annual report shall be filed in this Court and the Probation office Mbale about the progress of the Child until he is 18 years or until ordered otherwise.
- d) The applicants shall meet the costs of this application.

Stephen Musota

JUDGE

03.05.2012