

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**MISC CAUSE NO. 010 OF 2013**

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**IN THE MATTER OF MIREMBE TRACY AND BAZAALE STEVEN (INFANTS)**

**AND**

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**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY  
STEPHEN LEHNERT AND  
NATALIE LEHNERT**

**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

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**RULING**

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This Application is filed by the Applicants Stephen Lehnert and Natalie Lehnert seeking to be granted Legal guardianship of Mirembe Tracy and Bazaale Steven with full parental rights and responsibilities.

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They also seek to be allowed to obtain travel documents for the said children for purposes of travelling with and living with the children in the U.S.A where the Applicants reside.

The basis for this Application is that:

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- The said children are orphans and are under the care of their respective grandparents who have no financial means to provide for the children.
- The Application has not been objected to by anybody despite several announcements on radio and different newspapers.
- The applicants are ready and willing to provide the children with love, warmth and a healthy family environment.
- The Applicants have been found to be suitable parents by Adoption Centre for Family Building – an Adoption Agency in the U.S.A the applicants' country of origin.
- That it is in the best interests of the children.

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The two Applicants are American citizens who hold passports duly issued by the appropriate offices in that country.

They are married and solemnized their said marriage on 24/9/2004. They have 2 biological children of their own while they have also gone ahead to adopt 2 more children – aged 7 years both from Russia.

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The 1<sup>st</sup> Applicant is a Physician Radiologist for Rockford Radiology Associates – 6952 Rote Road Illinois, while the 2<sup>nd</sup> Applicant is a housewife, according to the Report issued by **Adoption Centre for Family Building** of the U.S.A, which has submitted an exhaustive report of a study they carried out on the suitability of the Applicants. (Attached to affidavit of 1<sup>st</sup> applicant as “G1”).

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The Application is supported by various affidavits.

MukayaAloni states that he is a Proprietor of shared Hope of orphans in Uganda a community based organization. He stated that the applicants contacted him about the possibility of getting orphaned children in Uganda so that they could be appointed legal Guardians.

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He discussed with the relatives of Mirembe Tracy and Bazaale Steven who accepted the Applicants intentions.

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The Kamuli District probation and Social Welfare officer Mboizi Joshua swore an affidavit in which he states that he visited the home of the infant and prepared a report to that effect.

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The report shows that only the home of Bazaale was visited.

I have looked at the affidavits of Kalende Peter, an Uncle to Mirembe, that of Mukama Eleazer, grandfather to Mirembe, Muwanika Christine, grandmother to Mirembe Tracy and also that of Kaleta Monic an Aunt to Mirembe.

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I have looked at the report of OpioOuma, the Probation officer Jinja and the affidavits of Kiyemba George – Grandfather of Bazaale Steven, Basekanayo Steven, the grandmother of Bazaale Steven.

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What is common in all the affidavits is that both infants are orphans and are living with their grandparents who are unable to provide the necessary livelihood or education to the infants.

I also interviewed Kiyemba George William and Mukama Eleazer and MukayaAloni. All these people are convinced or have been convinced that it is in the infants own interests to hand them over to the Applicants.

- 5 In matters concerning children, it is now established law and practice that the best interests of the child override all other considerations (**Section 3 of the Children’s Act and 1<sup>st</sup> Schedule to the Act**).

Article 34 of the constitution provides so.

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In **Civil appeal 81/2011; In the matter of Richard Masaba and an Application by (1) Matovu John Zirmuman and (2) Audrey F.G. Zirmuman**; It was held that the Court is duty bound to carefully evaluate all the evidence on record and take into account the best interests of the child before taking a decision.

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I have carefully looked at the available evidence for all intents and purposes the infants are indigent and need proper parental care and responsibility.

I have also looked at all the supporting evidence in respect of the Applicants suitability.

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Applicant No.1 will make 60 years this year which is an advanced age and also a retirement age in most jurisdictions. He has his own child from an earlier marriage while his wife also has her own child from an earlier marriage.

- 25 They have teenage adopted children from Russia aged 7.

At their age of retirement, one wonders what is pushing them to take on infants aged less than 7 years, leave alone the effort they have made to collect children from different jurisdictions for guardianship and adoption.

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Is their income so big and stable as to support 2 other members of a family who are not even 7 years compared to their own age of 60 when they are supported to retire?

I am not convinced that this is in best interests of these young children.

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There are other ways these children can be assisted if this is the intention of the applicants. They can do this through the institution that recommended them for guardianship, rather than launching them into a new life which for the reasons discussed above is unsustainable.

- 40 I accordingly decline to grant this application and it is disallowed accordingly.

Costs in the cause.

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**Godfrey Namundi**  
**JUDGE**  
**10/01/2014**