

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

HCT-04-CV-AC-0005-2014

**IN THE MATTER OF KAKOMA GIFT (INFANT)
AND
IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP
BY GEOFFREY JAMES SMARTE AND JACQUELINE LEE DONOVAN
SMARTE**

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

RULING

The applicants are **Geoffrey James Smarte** and **Jacqueline Lee Donovan Smarte**. The child **Kakoma Gift** is aged 3 years.

The application is for appointment as the legal guardians of **Kakoma Gift**. The grounds are contained in the statutory declarations of applicants, affidavits of **Prossy Namulinda Hamirie, Babita Ruth Kisakye, Siwundu Alphanse, Akello Josephine** and **Julius Ogallo**.

The applicants filed the following documents in support of the application:

- (i) Marriage certificate (Annex 'C').
- (ii) Home Study Report (Annex 'D')
- (iii) Letter of employment (Annex 'C').
- (iv) Background Criminal Check ('F').
- (v) Medical Checks (Annex 'G').
- (vi) Social Inquiry Report (H).

In applications of this nature the following questions must be satisfied with positive responses by applicants.

1. Whether the beneficiary is a child.
2. Whether there are any known parents, and whether they have consented to the guardianship.
3. Whether there are no other relatives that can sufficiently provide care and custody to the infant.
4. Whether the home where the child had been placed can take care and provide personal care to the child's physical, mental and emotional needs.
5. Whether adoption/guardianship is in the best interest of the child.
6. Whether applicants are suitable for the grant of legal guardianship.

I have dully considered the application. The application is backed up by the right laws and all documents provided as annexures conform to the required documents for such applications. I have also examined the applicants and other legal persons involved in the process.

All necessary precautions as envisaged in the law and as pointed out in the cases have been taken care of. This application relates to an abandoned child who was abandoned at the tender age of 2 years and placed in a home. The infant is only 3 years.

There are no known close relatives. Applicants have shown ability to take the child, offer her a home, parental care and also offer both financial and emotional support to the child. As observed in *Evelyn Atukwase Brianne Gamelin (Infant) FC No. 118 of 2010*; absence of known relatives compels court to grant the

application for guardianship. Also as pointed out in **Hogkins Andrew** and in the matter for an application by Michael William Friedrich and Another FC 222 of 2013, the child of only 3 years is emotionally in need of parental care, needs financial help and needs physical help. The applicants are found capable of offering him such care.

Before granting the order, court considers the best interest of the child as held by **J. Odoki** in RE. M. an infant SCCA No. 22/1994.

Having examined the applicants and documents attached to their application am satisfied that they satisfy the requirements as necessary for this application.

The application is hereby granted with the following orders:

1. Applicants be and are hereby appointed the legal guardians of **Kakoma Gift** (the child).
2. They are permitted to emigrate with the child in order to carry out their obligations towards this child.
3. Formalise adoption process in the USA.
4. The legal guardians shall submit once a year photographs and a report on the state of health progress and welfare of the child to the Registrar High Court Kampala (copy Assistant Registrar, Mbale) until the child is 18 years, or until the adoption process is completed.
5. The Registrar of this court shall furnish a copy of this Ruling together with the address of the legal guardians to;
 - a) The Ministry of Foreign Affairs Uganda at Kampala.
 - b) The Embassy of America.

- c) The Ministry of Justice and Constitutional Affairs Uganda.
- d) The Placing Agency which prepared the Home Study Report.

Costs of this application be borne by applicants.

I so order.

Henry I. Kawesa

JUDGE

12.12.2014