

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
FAMILY CAUSE NO. 26 OF 2014
IN THE MATTER OF NAKATO BIRIBAWA SCOVIA, AND WASSWA
PAUL EKOTE (MINORS)
AND
IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP
BY DAVID MATHEW LUDWIG AND JESSICA RAE LUDWIG

BEFORE: HON LADY JUSTICE ELIZABETH IBANDA NAHAMYA
RULING

This is an Application for Guardianship brought by Notice of Motion under Article 139(1) and 34 (1) and (2) of the Constitution of the Republic of Uganda 1995, Sections 14, 33 and 39 of the Judicature Act Cap 13, Sections 3, 4 and 5 of the Children Act Cap 59, Section 98 of the Civil Procedure Act Cap 71 and Order 52 r 1 and 2 of the Civil Procedure Rules S.I 71-1. This Application concerns the minors named NakatoBiribawaScovia and Waswa Paul Ekotewho are minors aged approximately one year and Nine months. This Application seeks the followingOrders:-

- a. That this Honorable Court declares the Applicants to be the Legal Guardians of the childrenNakatoBiribawaScovia and Waswa Paul Ekote.
- b. That this Honorable Court permits the said children to migrate to the United States of America, the Applicants' domicile to enable them fulfill their parental obligations.
- c. That Costs of the Application be provided for.

The Application is supported by the Affidavits of the Applicants, David Mathew Ludwig and Jessica Rae Ludwig, Okwale Simon, the biological father of the children, Nabwire Mary a maternal relative of the children, Isaac Namanya a social worker with God's Mercy Children's Home, the

grandmother of the children and Basereka Hirally of God's Mercy Children's Home.

Briefly the grounds of this Application which are found in the Probation Report of the Probation and Social Welfare Officer in Kayunga District are:-

- 1) That the children whose mother is deceased are currently in the temporary care and custody of M/s God's Mercy Children's Home;
- 2) That the children were referred to M/s God's Mercy Children's Home as needy children since their biological father had failed to look after them or fully provide for them;
- 3) That there is no possibility of resettling the children as their father has expressed inability to look after them or provide for them.
- 4) That no one else has come up to provide for the children herein besides the Applicants;
- 5) That the Applicants wish to fully provide for the children's emotional and psychological needs, medical needs, provide them with a home and give them parental love and care;
- 6) That the Applicants wish to migrate with the children to their home in the USA where they can effectively fulfill their parental obligations; and
- 7) That this Application is for the welfare and benefit of the named children: Nakato Biribawa Scovia and Waswa Paul Ekote.

The Applicants were represented by Ms. Dora Mirembe of Messrs Ssebagala Mirembe & Associates.

Issues

Issues raised by the Counsel for the Applicants are:-

- 1) Whether this Honorable Court has the jurisdiction to entertain this Application.
- 2) Whether the Applicants are suitable persons to be appointed Legal Guardians of the children.
- 3) Whether this Application is in the best interests of the children.

- 4) Whether the Applicants can migrate with the children to the United States of America.

Resolution of issues.

Issue 1: Whether this Honorable Court has the jurisdiction to entertain this Application.

I find this issue to be superfluous since the High Court has, on several occasions, made similar determinations. It is trite law that this Court has original unlimited jurisdiction on all matters in Uganda. **See Article 139(1) Constitution of the Republic of Uganda; Section 14 of the Judicature Act Cap 13.** Further, under Section 33 of the Judicature Act, this Court is authorized, pursuant to Section 33 of the Judicature Act, *to grant absolutely or on such terms and conditions as it thinks fit all such remedies as any of the parties to a cause or matter is entitled to.* Considering that this is an Application for legal guardianship of the infants Nakato Biribawa Scovia and Waswa Paul Ekote, Section 4 of the Children Act Cap 59 recognizes that a child is entitled to have guardians.

Therefore this Court has jurisdiction to entertain the Application.

Before I make any determination on the listed issues, I wish to state the sequence that I will resolve them. Issue 1 is concerned with this honorable Court's jurisdiction and I find it pertinent to consider Issues No. 1 and 3 first, particularly given the fact that Issue 3 entails the guiding principles relating to children.

Issue 3: Whether this Application is in the best interests of the children

It is trite law that the paramount consideration should be the welfare principle when making any decision concerning a child. **See Section 3 and paragraph 1 (b) of the first schedule to the Children Act.**

Hence consonant to the facts of this case, and in accordance with the Affidavit of Okwale Simon, who is the biological father of Nakato Biribawa Scovia and Waswa Paul Ekote, the children were born on the 26th day of September 2012. The children's mother passed away on the 20th December, 2013 leaving them in the sole care of their father. The deceased, Nerima Pelusi and Okwale Simon had seven (7) biological children. Okwale Simon could not wholly support and care for all these children. He was assisted in caring for some of the children by an organization called God's mercy Children's Home. He remained with Marion Machete Mary Rosette and Namenya Felesta. The others are being looked after by good Samaritans. He could not look after the twins given the fact that the said children were in and out of the hospital. The children also suffered developmental delays which is still eminent to date. Mr. Okwale Simon registered the children's plight with the Local Council personnel at Kitatya "B". Later, Mr. Okwale took his issues to the Child and Family Protection Unit Kayunga Police Station from where he was recommended to God's Mercy Children Home. The children Nakato Biribawa Scovia and Waswa Paul Ekote were placed under the care of God's Mercy Children Home by virtue of Care Orders dated 26th May 2014. They have been under the care of God's Mercy Children Home to date. In Mr. Okwale Simon's Affidavit, he states that he consents and is in favour of the Application for legal guardianship. Mr. Okwale Simon further deponed that he is not in a position to look after and provide for the twins. Furthermore, that efforts to resettle the children have been futile as there is hardly any maternal or paternal relative willing to look after the children or provide for them in any way what-so-ever.

Thus premised upon the above considerations, I find that in the best interests of the children Nakato Biribawa Scovia and Waswa Paul Ekote and their welfare, the Application be granted.

Issue 2: Whether the Applicants are suitable to be appointed the Legal Guardians of the children.

I have noted Ms. Mirembe's submissions on the ground. The Applicants, David Mathew Ludwig and Jessica Rae Ludwig are American citizens aged thirty six (36) and thirty four (34) years respectively. The Applicants attached copies of the Passports to their respective supporting Affidavits, as per Annexure "A" attached to each Affidavit. The Applicants have been married as evidenced in Annexure 'B' of both their Affidavits. They reside at 1954 Fullerton Avenue Costa Mesa. C.A 92627. Mr. David Mathew Ludwig is employed as a Minister of Family Ministries at St. Andrews Presbyterian Church while Jessica Rae Ludwig is also employed as a Minister of Family Ministries at the same Church.

In her submissions, Ms.Mirembe argued that the Applicants are competent to be appointed legal guardians of the minors. Counsel adduced a copy of the Applicants' home study carried out by Leslie. A. Siegel, the Executive Director of the Across the World Adoptions. It is dated 15th May, 2013 and it recommended the Applicants as suitable persons. The Applicants also have no criminal history or of child abuse, sexual abuse, substance abuse or domestic violence.The Applicants have two children to *wit*; Macy Grace Ludwig and Owen Justice Ludwig aged six (6) and four (4) respectively who are also under their care. I noticed the two minors in Court. They showed no hostility to Nakato and Waswa despite their race. They seemed to be at ease with them.

I am persuaded by the authorities cited by the Applicant's counsel. Counsel cited ***in the matter of Nakanwagi Gladys Matovu and Nabukeera Marion Daisy Matovu Family Cause No. 104 of 2011*** where his Lordship Justice Mukiibi Moses observed that '*a guardian should be a person fit to be entrusted with parental responsibility for a child. It must be a person who is ready to place himself or herself in relation to the child in loco parentis for the purpose of its care and welfare...*' However, the facts in that case are distinguishable from those of the case before me. The Applicants therein had been supporting the children whereas in the case at hand, the Applicants have shown

willingness to be legal guardians of the children and then will thereafter apply for adoption in their home country.

I am satisfied that the Applicants are suitable persons who can be trusted with the role legal guardianship of the children NakatoBiribawaScovia and Waswa Paul Ekote. It is my opinion here that the best interests of the children require that the Applicants be permitted to emigrate with the children to the USA so as to allow the Applicants to be able to fully fulfill their obligations as legal guardians of the two children. This Application is hereby allowed.

In view of the above, it is hereby ordered that:-

1. The Applicants, David Mathew Ludwig and Jessica Rae Ludwig are appointed legal guardians of NakatoBiribawaScovia and Waswa Paul Ekote.
2. The Applicants are permitted to emigrate with the children to the United States of America.
3. The Applicants are directed to register the order with the Registrar of Documents, Uganda Registration services Bureau, Ministry of Justice and Constitutional Affairs, Kampala.
4. The Applicants are directed to obtain Ugandan passports for the children and renew them as may be required under the law.
5. The Applicants are directed to register the children with the USA Embassy and Ugandan Counsel in the USA.
6. This Court should be notified about the Adoption when it occurs.
7. The Costs of this Application shall be borne by the Applicants.

Signed,

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**Hon. Lady Justice Elizabeth Ibanda Nahamya
Judge**

22nd August, 2014.