

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
FAMILY CAUSE NO. 012 OF 2014**

**IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF
KALEMA GRACE (MINOR)**

AND

**IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP BY
JOSHUA ROBINSON AND JENNIFER ROBINSON.**

BEFORE: HON LADY JUSTICE ELIZABETH IBANDA NAHAMYA

RULING

This is an Application for Guardianship brought by Notice of Motion under Articles 13, 9(2) and 139(1) of the Constitution of the Republic of Uganda 1995, Sections 14, 33 and 39 of the Judicature Act Cap 13, Sections 3, 4, 5 and 6 of the Children Act Cap 59, and Order 52 r 1 and 2 of the Civil Procedure Rules S.I 71-1. This Application concerns a minor, Kalema Grace, aged 2 years. The Application is for Orders that:-

- a) The Applicants be appointed legal guardians of Grace Kaleme, a minor of 2 years old.
- b) That the Applicants be granted custody of the said minor, Grace Kalema
- c) The Costs of the Application be provided for.

The Application is supported by the Affidavits of the Applicant, Joshua Robinson, one of the Applicants and Kalema Sepiriya, the father of the child. Briefly, the grounds of this Application are:-

- 1) That the minor's mother died, leaving her at a tender age of just above 1 year and that the biological father of the child is supportive of the Application for Guardianship, custody and or adoption.

- 2) That the Applicants are a loving, caring and capable family, willing and able to provide all the love, care, and support the child shall need.
- 3) That the Applicants are willing and have commenced a process for the adoption of the minor in the United States.
- 4) That the Application is in the best interest of the child whom shall benefit socially, emotionally and spiritually if the order is granted.

The Applicant was represented by Mr. Duncan Sebalu of Messrs.' Jingo, Ssempijja & Co. Advocates.

BACKGROUND

The minor, Kalema Grace is aged 2 years having been begotten by Grace Kalema and the late Nakalema Faridah on the 14th September, 2012. The late Nakalema Faridah passed away on the 17th March 2014 due to pneumonia. However, she left behind two other children from a previous marriage. These are under the care and guardianship of Grace Kalema who since passing on of his late wife, has not had any gainful employment to cater for the needs of the minor and her other siblings. Ideally the family depends on handouts and good will of their neighbors and good Samaritans.

The Applicants, Joshua Robinson and Jennifer Robinson are American citizens aged 36 years and 35 years respectively. They are residents of 760 Redman, Chubbuk, Idaho 83202 in the United States of America and they have been married for 16 years. I have seen copies of their Passports. The Applicants first met the minor's family in 2012 during their first visit to Uganda with a non-profit Organization called Hands 4 Uganda, through Next Generation Ministries, an Organization carrying out charity and missionary work in Jinja. The Applicants are a Christian, God fearing and evangelical couple who are willing and ready to take responsibility of looking after the child. The couple has been blessed with two daughters aged 5 and 3 years respectively. Furthermore, Mr. Joshua Robinson, one

of the Applicants confirmed that upon learning of the plight of the minor, he together with his wife, Jennifer Robinson, approached Grace Kalema, the minor's biological father over the available options that would guarantee the health and safety of the child's future. However, upon further inquiry, from the father of the child, the only available options was making an application for guardianship. It is pursuant to that background that the Applicants are now desirous of being appointed legal guardian of the minor, Kalema Grace and that they should be allowed to travel with the minor to United States of America where they are permanently resident so as to enable them to effectively carry out their role.

In his oral submissions, Mr. Sebalu, Counsel for the Applicants reiterated the grounds in support of the Application. He submitted that the minor's biological father is not in position to care for the minor. Mr. Sebalu submitted further that it will be in the best interests of the minor to be taken by the Applicants, who will be able to more effectively look after the minor. Learned Counsel contended that court be pleased to allow the Application.

Resolution

Before I pronounce myself on whether to allow the Application or not, it is important to note that this Court in an Application of this nature, is guided by the principles of the welfare of the minor. It is trite law that in any matter pertaining to a child, the welfare principle should be the paramount consideration when making any decision concerning a child. **Section 3 and paragraph 1 (b) of the first schedule to the Children Act. Article 4 (1) of the African Charter on the Rights and Welfare of the Child, Article 3(1) of the United Nations Convention on the Rights of the child.** These are all to the effect that in all matters concerning decision making where the child is concerned, the primary concern must be the best interests of the child. This is also supported by judicial precedents. In the case of **Re M (an infant) Civil S.C Appeal No. 22/1994** it was held that in all matters related to children, the

welfare and best interest of the child shall be paramount. See also ***Deborah Joyce Alitubeera & Richard Masaba Court of Appeal Civil Appeal No. 70 & 81 of 2011.***

In accordance with the facts, it is without a doubt that it is indeed in the best interests of the minor Kalema Grace that the Application is granted. I have already given a brief overview about minor's background. Apart from the fact that the minor lost her biological mother *per* the Affidavits of Grace Kalema and Joshua Robinson, the minor has since then been in the custody of her father, Mr. Kalema Grace. According to the evidence, Mr. Kalema Grace does not have any steady source of income and his family depends upon the good will of the neighbors and any other good Samaritans. It is also clear that none of the other relatives are willing to take care of the minor or support the minor's biological father in any way. Whereas Mr. Grace Kalema takes care of two other children who were left behind by the late Nakalema Faridah from a previous marriage. P. Ex. 24 which is the Probation and Social Welfare Report authored by Mr. Opio Ouma, the Probation and Social Welfare Officer, Jinja District reveals that the minor's father is financially incapable of providing for the basic needs of the minor and that her future is clouded in mystery; the child needs parental love, care and guidance which the father cannot readily offer; the Applicants are well known to the child's family and the child. That a visible bond already exists between them since the Applicants have constantly been staying with the minor whenever they are in the country and that the best interests of the child's welfare will be best served by the Applicants from whom the child stands to benefit socially, emotionally and physically once they are allowed to take care of the minor who are in the best position to cater for the child's emotional, physical, and educational needs. Furthermore, the Applicant is ready to offer the minor with a home, and all her needs. The Applicants provided a copy of the 'Home Study Report and Assessment Notice'. The Applicant has a decent home. This was admitted and marked P. Ex 4. The Report was conducted by CASI Foundation For Children, Inc. (CASI), which is an agency licensed by the

State of Idaho to conduct home studies in Idaho for domestic adoptions, international adoptions and it concluded that the Applicants are suitable for the persons. Both the Applicants are in gainful and steady employment. Ms. Jennifer Robinson is employed as a Physical Assistant practicing in the Portneuf Cancer Center. Whereas Mr. Joshua Robinson is an Associate Pastor at Gate City Christian Church, a religious organization in the State of Idaho, United States of America. I have also seen copies of both the Applicant's criminal record and Medical Examination Report. Furthermore, I am satisfied that the United States of America will respect the Order.

Therefore, premised on the above background, it is in the best interests of the minor Kalema Grace that the Application be granted. The Applicants have satisfied to this Court that the minor stand to benefit out of the Application and that it is in her best interests. This Court has authority to grant orders of legal guardianship. **See Section 33 of the Judicature Act; and Section 98 of the Civil Procedure Act; In the matter of Francis Palmer an infant, Civil Appeal No. 32 of 2006.** In the circumstances, the Applicant should be granted legal guardianship over the minors and he is permitted to travel with the minor to the United State of America where they can effectively carry out their roles. This Application is allowed.

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

1. The Applicants, Joshua Robinson and Jennifer are appointed legal guardian of the minor Kalema Grace.
2. The Applicants is directed to obtain a Ugandan passport for the minor and renew it as may be required under the law.
3. The Applicants are permitted to travel with the minor to the United States of America.

4. The Applicants are directed to register the order with the Registrar of Documents, Uganda Registration services Bureau, Ministry of Justice and Constitutional Affairs, Kampala.
5. The Applicants are directed to register the Order with the United States Embassy and Ugandan Counsel in United States of America.
6. The Applicants shall submit yearly reports on the welfare, progress and health of the child to the Registrar, Family Division of the High Court of Uganda at Kampala until the child is 18 years old, or until directed otherwise.
7. The Applicants should notify this Court when the Adoption is completed.
8. The Applicants will pay costs to the Application.

Signed,

Hon.Lady Justice Elizabeth Ibanda Nahamya

Judge

19th November, 2014.