

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[FAMILY DIVISION]
MISCELLANEOUS APPLICATION NO. 1110 OF 2023
[ARISING FROM KAMPALA HIGH COURT ADOPTION CAUSE NO. 27 OF
2018]
AND
IN THE MATTER OF KATHERINE DAVIS MAJORS AND BENJAMIN
ANDREW MAJORS
AND
IN THE MATTER OF TIBITA SHAKIRA
RULING BEFORE: HON. LADY JUSTICE CELIA NAGAWA

1.0 Introduction.

1.1 This is an Application brought by Notice of Motion under **Section 14 of the Judicature Act, Cap. 13, Section 98 of the Civil Procedure Act, Cap. 71 and Section 3 of the Children Act Cap 59** seeking orders that;

- a) A declaration doth issue that the 1st Applicant exercised parental rights and responsibilities over Tibita Shakira following the grant of a Legal guardianship Order to the 1st Applicant on 15th April, 2011.
- b) Costs of the Application be provided for.

1.2 The grounds upon which the Application is based are set out in the Affidavit of the 1st Applicant, Katherine Davis Majors, briefly that;

1. The 1st Applicant has exercised parental control over the child TIBITA SHAKIRA since 15th April, 2011 when the 1st Applicant was appointed the Child's Legal Guardian.
2. The Applicants jointly filed for the Adoption of Tibita Shakira vide Jinja High Court Adoption Cause No. 027 of 2018 on the



30th July, 2018 when TIBITA SHAKIRA was 17 years old and the Adoption Order was granted on the 28th November, 2018.

3. Upon grant of the Adoption Order, the Applicants proceeded to apply for an American Immigrant Visa for Tibita Shakira and the same was deferred because the Adoption Order was granted after she had attained 16 years of age.
4. To give effect to this Honourable Court's Adoption Order in Family Cause No. 27 of 2018, it is in the interest of justice that this Court recognises by way of Declaration that the 1st Applicant exercised parental control over TIBITA SHAKIRA from 15th April, 2011.
5. A declaration from this Court recognizing the Applicants' parental rights over the Child TIBITA SHAKIRA before the grant of the Adoption Order will assist in navigating the immigration challenges experienced by the Applicants and TIBITA SHAKIRA.
6. It is in the interest of justice that this Application be allowed.

Representation and Hearing:

The Applicant was represented by Ms. Abbo Brenda of Ekirapa & Co. Advocates.

2.0 Background

- 2.1 Tibita Shakira was born on 3rd March, 2001. She is aged 23 years old. The 1st Applicant, Katherine Davis was granted a guardianship order on 15th April, 2011 for Kisakye Grace and Tibita Shakira. She was permitted to travel and live with the children in Uganda, USA and elsewhere in the world where the applicant would live and work in order to fulfil her obligations as a legal guardian. The applicant was ordered to submit a report on the state and welfare of each child to the Registrar Family Division of the High Court of Uganda every



six months until the children were 18 years old or until directed otherwise and ordered to pay costs for the application.

2.2 On 28th November, 2018, the Applicants were granted an Adoption Order having filed Adoption Cause No. 027 of 2018 for both children Kisakye and Tibita and another child Apio Joyce. The Adoption Orders were that parental relationships with all rights, duties, powers, responsibilities and authority between Apio Joyce, Kisakye Grace and Tibita Shakira on the one hand and Benjamin Andrew Majors and Katerine Joyce Davis Majors on the other hand were established. An entry to be made in the Register of births and deaths, reflecting a change in parental relationship in respect to Apio Joyce, Kisakye Grace and Tibita Shakira. The Petitioners were to serve the Consular Department of the Ministry of Foreign Affairs in Kampala and costs for the Petition.

2.3 The applicants pray for a declaration from this court recognizing the Applicants' parental rights and responsibilities over the child Tibita Shakira prior to the grant of the Adoption Order to assist navigate the immigration challenges experienced by them and Tibita Shakira.

3.0 Issue for Determination before this Court.

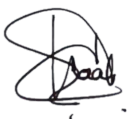
The Applicant raised one for determination;

Whether the Legal Guardianship Order issued to the Applicant on 15th April, 2011 granted the 1st Applicant parental rights and responsibilities in respect of the child TIBITA SHAKIRA?

4.0 Burden of Proof.


4.1 The Applicant by virtue of **Section 101, 102 & 103 of the Evidence Act, Cap. 6** has the burden of proving the facts alleged in her application on the balance of probabilities.

5.0 Determination of the Court.



Whether the Legal Guardianship Order issued to the Applicant on 15th April, 2011 granted the 1st Applicant parental rights and responsibilities in respect of the child TIBITA SHAKIRA?

- 5.1 The Applicant submitted that she started fostering TIBITA SHAKIRA under the Supervision of the Probation and Social Welfare Officer of Jinja District on 25th August, 2010 when the child was 9 years old. She then petitioned the High Court for a Legal Guardianship Order vide Family Cause No. 40 of 2011 when Shakira was 10 years old and a legal guardianship Order was granted.
- 5.2 It is the Applicant's submission that she took over full parental responsibility for Tibita Shakira and provided for all her needs including enrolling her in School. For all intents and purposes, she was the Child's parent. She submitted that she has looked after, lived with and provided for the Child's necessities since she started fostering the Child.
- 5.3 The Applicant further submitted that she married the 2nd Applicant on 12th March, 2015 and together they have exercised Parental Control over the Child. She submitted that on the 30th July, 2018, upon filing a Petition, they were granted an Adoption Order over TIBITA SHAKIRA when she was 17 years old. The Applicants contend that the process of immigrating Tibita Shakira to the United States of America was stalled because she was 16 years of Age when this Honourable Court granted the Adoption.
- 5.4 It is the Applicant's submission that they were advised that if this Honourable Court recognizes the 1st Applicant's Legal Guardianship Order as bestowing upon her parental rights, the immigration Application may be reconsidered.
- 5.5 The Applicants submitted relying on **Section 98 of the Civil Procedure Act, Cap. 71** that provides for the Court's inherent powers to make such orders as may be necessary for the ends of



justice or to prevent abuse of the Court process. Counsel for the Applicant contended that a guardianship order grants the holder of a Guardianship agreement parental responsibility over the Child until they attain majority age. The effect of the order is to place the guardians virtually in the same position as parents with parental responsibility,

6.0. **Determination.**

- 6.1. The court finds that the result of a Guardianship order is not in dispute. It is trite law that a Guardianship Order grants the holder parental responsibility over the Child.
- 6.2. Regarding the issue raised by the Applicant addressing the question of whether the Legal Guardianship Order issued to the Applicant on 15th April, 2011 granted the 1st Applicant parental rights and responsibilities in respect of the child TIBITA SHAKIRA, this court answers this in the affirmative. Any Guardianship Order awarded to an Applicant over a Child will grant that holder of the said Order Parental Rights over the Child until they turn 18. Therefore, the court affirms that the effect of the Guardianship Order granted to the 1st Applicant on 15th April, 2011 was to grant the Applicant parental responsibility over Tibita Shakira until she turned 18.
- 6.3. The Applicant filed a Petition when the child was 17 years, vide Adoption Cause No. 27 of 2018 which was granted on 28th November, 2018 and this terminated any parental relationship and established a parental relationship now with the applicants herein.
- 6.4. This court can not therefore make declarations for guardianship orders made on 15th April, 2011 and yet there is an Adoption Order which has never been rescinded. This Adoption Cause No. 27 of 2018 terminated all rights, duties, obligations and liabilities of the parents and guardians in relation to the future custody, maintenance and education of the child, including all rights to appoint a guardian which were extinguished.



- 6.5. The applicant even if she were seeking for declarations before the Adoption Order was granted she has not proved to this court that she abided by the guardianship order to submit a report on the state and welfare of the child to the Registrar Family Division of the High Court of Uganda every six months until the children turned 18 years or until directed otherwise. The applicant failed on this order.
- 6.6. Furthermore, being awarded parental rights over a child vide a court order and exercising the said parental rights are two different things. One of which the court can be certain of, and the other the court cannot ascertain without evidence.
- 6.7. The 1st Applicant asserts that she has been exercising Parental Responsibility over Tibita Shakira by living with her, paying her school fees and taking care of her basic needs. These are assertions of which the court requires proof that may have been in the form of school fees receipts, photographic evidence, bank transfer payments, correspondence with the child regarding her day-to-day needs, shopping and requirements list and/or a report from a Local Council Chairperson or any other person with the authority to affirm her assertions. The law of Evidence is clear under **Sections 101, 102 & 103 of the Evidence Act, Cap 6** in stating that the Applicant has the burden of proving the facts alleged by her in the Petition on the balance of probabilities.
- 6.8. I therefore, find that the Applicants failed to discharge their burden of proof and the court cannot order any Declaration as prayed for. In that regard, this Application is hereby denied.

Dated, Signed and Delivered via email this 24th day of April, 2024.



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CELIA NAGAWA
JUDGE