

TANZANIA / JUDGMENT

20161024 TZHC Arusha

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.'. IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY OF ARUSHA ATARUSHA MISC. CIVIL APPLICATION NO. 26 OF 2016 IN THE MATTER OF THE JUDICATURE AND APPLICATION OF LAWS ACT, [CAP.358 R.E. 2002] , AND IN THE MATTER OF THE LAW OF THE CHILD ACT, NO. 21 OF 2009 AND IN THE MATTER OF NANCY NGAYA SAMURIA THE CHILD AND IN THE MATTER OF AN APPLICATION FOR LEGAL CUSTODY AND GUARDANSHIP ORDERS BY CLAIRE UPSHALL- THE APPLICANT

RULING

DR. M. OPIYO, J. This is a ruling in respect of an application made under section 2 (1) of the Judicature and applications of laws Act, [Cap 358 R.E 2002], article 4 (1) of the African Charter on the Rights and Welfare of the child, 1990, Article 3

- (1) of the United Nations Conventions on the Rights of the Child, 1989, 1 section 4(2) 7(1) 8(1) 9(1) (2), 16 (c) , 37 (1), 45 (1) of the Law of the Child Act, No 21 of 2009 and section 95 of the Civil Procedure Code [Cap 33 R: E 2002] and any other enabling provision of the laws. It is the application for the orders that;
- (1) That, this Honourable Court be pleased to appoint , CLAIRE UPSHALL to be legal guardian of the Child by the name NANCY NGAYA SAMURIA, with full parental rights and responsibilities.
- (2) This Honourable Court be pleased to grant legal custody of the child NANCY NGAYA SAMURIA to the applicant.
- (3) That, this Honourable Court be pleased to issue orders to the effect that Claire Upshall, the applicant herein be permitted to live and travel with the child, Nancy Ngaya Samuria, ,in the United Republic of Tanzania, in the United Kingdom of Great Britain and Northern Ireland and or elsewhere in the World.
- (4) Any such orders that this Honourable Court may deem fit just to grant.
- (5) Costs of this application be met by the applicant. The applicant in this matter is represented by Learned Counsel, Robert Mgoha, who, in support of the application submitted that the applicant is 2 British citizen aged 26 years. She has been onsite Director and Volunteer with foundation and orphanage centres by the name of Watoto Kicheko Orphanage Centre

located at Njiro area, Arusha Region in the United Republic of Tanzania, and Neema House Tanzania, Orphanage Centre and Cradle of Love Baby Home, located in Usa River area, in Arusha Region in the United Republic of Tanzania from January, 2010 to date. Mr. Mgoha further submitted that, the applicant desires to be the legal guardian of the child, Nancy Ngaya Samuria whom she has been living with from December 2011 to date and she has been responsible for her education, food and shelter as provided under section 8 (1) of the Law of the child Act. Giving the brief History of the child Mr. Mgoha said that sometimes in Sept. 2009 the Uncle of the child by the name Edward Michael Siyokino Parteyi in collaboration with parents of the child informed the Cradle of Love Orphanage home that he intended to place the child to the said orphanage center for better supervision and care for the reason that the environment they have been living in were not supportive and conducive for the well- being and growth of the child Nancy, and that On the 4th Sept 2009 she was admitted to the orphanage centre. ANN LG 3. By January 2010 the applicant started work at cradle of Love Baby Home and became aware of the situation after being informed of the background History with which she was touched and stated developing relationship between them. The 3 relationship grew up and on December 2011 the applicant started living with the child. i He further submitted that, on the 19th April 2012, the Arusha DC Social Welfare officer cemented the relationship between the two by issuing a letter giving directions of what was to be done in relation to the application. From that period to date she has been fully responsible for all necessities to the child and at all Material times she has maintained communication and visitation with the child parents and uncle. He added I that the natural mother of the, child Grace Ngaya Samaria and natural father, Ngaya Samuria Kawia are both present before this court today and the uncle of child Edward Michael Sujukino Parteyi are all in support of the I application and sworn affidavit to that effect. And the applicant believes that it is for the best interest of the child that she is Legally appointed the legal custodian and guardian of the child with full parental rights and responsibilities. The child Nancy Ngaya Samuria was placed at the orphanage in September 2009 for reason that the environment was not supportive for her well-being as it was a village in Longido and there was a drought at that time, the focus of the community was to fight against drought hence they lacked concentration to the child care. From the time that the child was given admission to the Orphanage Centre it was only the applicant who shown interest of taking full parental responsibilities over the child, and From the time she was admitted there have been no neither confused arrangement no plans for the future and well being of the child, 4 by neither the social welfare department no anyone else apart from the applicant Mr Mgoha submitted that, the applicant do believe under the guidance, the child subject to the application is in need of protection and care from the fact that the natural parents are unable to provide full parental care. The applicant is the one who has been doing so since 2011 and the applicant believes that this court will consider best interest of the child by granting the order sought in the chamber summons. It is for her best interest to be placed under custody and guardianship of applicant so that she can enjoy right under section 7 (1) of the Law of the Child Act. Based on the above submission Mr. Mgoha prayed that this Honourable court to consider the application and grant the prayer sought in the chamber

summons. After consideration of the submission of the counsel, I am convinced that, it is for the best interest and welfare of the child NANCY NGAYA SAMURIA which is of paramount importance in such applications. Given the fact that no confirmed arrangements of her well being and future plans has been established by neither the social welfare Department in the United Republic of Tanzania nor her parents, the fact that will affect her both emotionally and physiologically in the long run. In my view having a person who is willing to offer her a parental care is to her best interest. I therefore grant the application under the following orders; 5

- (1) The applicant CLARE UPSHALL is hereby appointed legal guardian of the Child by the name NANCY NGAYA SAMURIA
- (2) The custody of the child NANCY NGAYA SAMURIA is granted to the applicant CLARE UPSHALL
- (3) The applicant CLARE UPSHALL is permitted to live with the child Nancy Ngaya Samuria in the United Republic of Tanzania.
- (4) The applicant CLARE UPSHALL is permitted travel and with the child Nancy Ngaya Samuria in outside the United Republic of Tanzania with prior written permission of the child parents.
- (5) The child Nancy Ngaya Samuria, shall be allowed to visit her parent's home at least twice a year.
- (6) The costs of this application is to be met by the applicant. DR. M. OPIYO JUDGE 24/10/2016 6

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