

TANZANIA / JUDGMENT

20160222 TZHC Arusha

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., IN THE HIGH COURT OF TANZANIA AT ARUSHA MISC. CIVIL APPLICATION NO. 225 OF 2015 IN THE MATTER OF THE LAW OF THE CHILD ACT, 2009 [ACT NO.21 OF 2009] AND IN THE MATTER OF THE CHILD JACKSON JOHN AND IN THE MATTER OF AN APPLICATION FOR LEGAL GURDIANSHIP ORDER BY KIMBERLY SUE GREEN AND BENJAMIN ERIC GREEN - APPLICANTS Date of last Order: 10/02/2016 Date of Ruling: 22/02/2016

RULING

MASSENGI, J. The Applicants KIMBERLY SUE GREEN and BENJAMIN ERIC GREEN married couples, filed an application before this court made under the provisions of article 13 (1), (2) and 108 (2) of the Constitution of the United Republic of Tanzania, 1977 (as amended), 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, articles 3

- (1) of the United Nations Conventions on the Rights of the Child, 1989, sections 4 (1), (2), 7 (1), 8 (1), 9 (1),(2), 16 (b), (c) 37 (1) of the Law of the Child Act, (Act No. 21 of 2009) and section 95 of the Civil Procedure Code, Cap. 33 R.E 2002 and any other enabling provisions of the law; praying for the following order;
1. That, this Honourable Court be pleased to appoint KIMBERLY SUE GREEN and BENJAMIN ERIC GREEN to be legal guardians of the child JACKSON JOHN with full parental rights and responsibilities.
2. That this Honourable Court grants custody of the child, JACKSON JOHN to the Applicants.
3. That, this Honourable Court issue orders that the Applicants be at liberty to obtain Tanzania passport for the child JACKSON JOHN and be permitted to travel and live with the child in the United Republic of Tanzania, the United States of America and or elsewhere in the world.
4. That, this Honourable Court to order the Applicants to return the child to the United Republic of Tanzania and produce JACKSON JOHN before the Deputy Registrar of the High Court of Tanzania at Arusha in after every five years until he attains the age of majority unless any such order of the Court in the United States of America or in the United Republic of Tanzania.

5. That, this Honourable Court to issue orders to the effect that, the Applicants through Christian Family Services located at 17105 W Twelve Mile Road, Southfield, MI 48076; a licensed adoption agency in the State of Michigan in the United States of America be submitting a progressive report on the state, and welfare of the child, after every twelve months to the Deputy Registrar of the High Court 2 of Tanzania at Arusha, the Regional Social Welfare Offices, Arusha region in the United Republic of Tanzania :and Tanzania Embassy located at 1232, 22 nd ST NW, Washington, DC 20037 in the United States of America.
6. Any other orders that this Honourable Court may deem fit and just to grant.
7. Costs of this Application be met by the Applicants. This application is supported by joint affidavit of the Applicants namely KIMBERLY SUE GREEN and BENJAMIN ERIC GREN. Before this court, the Applicants were represented by Mr. Mgoha learned counsel. Arguing the application, Mr. Mgoha submitted that the Applicants are married couples who got married on 9/8/1996. Their permanent address is 19391 SAGEFENTON Michigan 48430 OAKLAND COUNTRY, AMERICA. The Applicants are aged 42 and 46 years old respectively. He further stated that the Applicants are graduates in bachelor degree .of Science and ~ er 9~ ..s1,,£th o u s Clttl"1 cb (B6< OVi>J Business Administration with joint gross income of USD ~and they have permanent home in USA valued at USD 200,000. It was further stated that the Applicants desire to be the legal guardians of the child Jackson John who currently resides at the Cradle of Love Orphanage Centre, Arumeru District, Arusha Region, Tanzania. On 1ih October, 2012 the natural mother of the child by the name of BERTHA FAIDA KAGATULA being afraid of running the child and being unable to take care of him due to stigma of albinism and discrimination in the community requested the Social Welfare Officer to place the child under the orphanage centre for better supervision, maintenance, care and safe ' 3 custody. The child was admitted in the centre on 17/10/2012. The mother kept making follow up to see and look for a family to take care of the child Jackson John until by May, 2015 when Applicants went to visit the centre met the child and started relationship with the child and became responsible for his food, cloths, medical care and now they have decided to take full responsibilities of the child and be placed under more secured environment. He added that the Applicants have agreed with the natural mother of the child to take full responsibility of caring the child. He further contended that the Applicants have been complying with the duties and responsibilities over the child accordance to section 8 (1) and 9 (1) of the Law of the Child Act, 2009 except they have not supplied shelter and education to the child and that is the reason they are making this application so as to obtain full guardianship. He submitted that the ; Applicants believes that the child being albino deserves all necessary of a child and pray the court to decide the application :in line with the principle of the best interest of the child Jackson John basing on the following reasons;
 1. The child being albinism but the signs is dis'appearing now however the community still treats him as albino.

2. The child has been at orphanage centre since October 2012 to date which is not a permanent solution to the future of the child.
3. The natural mother of the child Jackson John has no objection and has contented. 4
4. It is a common practice to the courts to consider best interest of children hence best interest of the child Jackson John has to be considered.
5. There are no confirmed arrangement for the, wellbeing and future plans established by any organization in Tanzania nor natural mother apart from arrangement which has been made by the Applicants. Basing on the above, he prayed his application be allowed. After going through the submissions of the Applicant's counsel and having examined the Applicants joint affidavit; I will start by referring to section 37 (1) of the Law of the Child, which provides that it is a parent, guardian or a relative who is caring for a child may apply to a court for custody of the child. But section 4 (2) of the same Act oblige the courts to consider the best interest of a child primarily in making all actions concerning a child inclusive this application. The interest of the child being of paramount consideration, this court after considering the background of the child that;
 1. The child Jackson John was born with albinism and her natural mother BERTHA FAIDA KAGATULA being unable to take care of the child due to stigma of albinism and discrimination in the community decided to place the child under the orphanage centre for better supervision, maintenance, care and safe custody until the Applicants met the child when visited the orphanage centre and showed interest of taking care of the child.
 2. That the child has been at the orphanage centre from 1st October, 2012 and the mother of the child has been making follow up and is looking for a family to take care of the child but the struggle was futile until May, 2015 when the Applicants visited the orphanage centre and showed interest of taking care of the child.
 3. Since 1st October, 2012 when the child has been at the orphanage centre no one confirmed arrangements for the future and wellbeing of the child including the Social Welfare Department apart from the Applicants.
 4. The Applicants have confirmed their intention in taking full parental responsibilities and duties to the child. Further according to section 8 (1) of the Law of the Child, it is the duty of any person having custody of the child to maintain the child, and in particular that duty gives the child the right to food, shelter, clothing, medical care, education and guidance the duties which this court has been satisfied that the Applicants has been providing to the child. After considering the above, this court finds that for the best interest of the child in order to place the child under more secured environment and since the Applicants has shown interest and commitment of taking care of the child in all his necessities and maintaining him, then this court allow this application and grant the following orders; •

1. This court appoints the Applicants KIMBERLY SUE GREEN and BENJAMIN ERIC GREEN to be the legal guardians of the child JACKSON JOHN with full parental rights and responsibilities.
2. This court grants legal custody of the child JACKSON JOHN to the Applicants KIMBERLY SUE GREEN and BENJAMIN ERIC GREEN with the following conditions; 6
 - (i) The Applicants are at liberty to obtain Tanzania passport for the child JACKSON JOHN and are permitted to travel and live with the child in Tanzania, the United States of America or anywhere else in the world. (ii) The Applicants to return the child to the United Republic of Tanzania and produce JACKSON JOHN before the Deputy Registrar of the High Court of Tanzania at Arusha in after every five years until he attains the age of majority (18 years) unless any such order of the Court in the United States of America or in the United Republic of Tanzania. (iii) The Applicants through Christian Family Services located at 17105 W Twelve Mile Road, Southfield, MI 48076; a licensed adoption agency in the State of Michigan in the United States of America be submitting a progressive report on the state and welfare of the child after every twelve months to the Deputy Registrar of the High Court of Tanzania at Arusha the Regional Social Welfare Offices, in Arusha region in the United Republic of Tanzania Embassy located at 1232, 22nd ST NW, Washington, DC 20037 in the United States of America.
3. Costs of this application be met by Order accordingly. JUDGE 22/02/2016 7 Ruling delivered in Court this 22 nd day of February, 2016 in the presence of.... JUDGE 22/02/2016 8

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