

In Re: Namutebi (an infant)
(Adoption Cause No. 08 of 2014)
[2014] UGHCFD 28 (2 May 2014)
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3. The Applicants be granted orders to subsequently adopt the child.

The Application is based on the following grounds:-

1. The child is an orphan having lost her biological mother AMINA NALULE.
2. The child's biological mother the late AMINA NALULE abandoned the child while she was still an infant.
3. The whereabouts of the child's biological father are unknown and efforts to trace him have been futile.
4. The child is solely in the care and custody of M/S KIDS INSPIRING KIDS.
5. The child's maternal relatives have consented to this Application.
6. There is no one else ready and willing to provide for the child apart from the Applicants herein.
7. The Applicants wish to provide for the child's emotional, psychological and educational needs and give her a home, medical attention, parental love and care.
8. The Applicants intend to immigrate with the child to USA where they can provide her with a home, medical attention, parental love and care.
9. This Application which is also recommended by the probation and social welfare officer, Makindye Division is for the welfare and benefit of the child.
10. The Applicants are responsible persons working for gain and capable of catering for the child's needs.

The Application is supported by the Affidavits of the Applicants, **MC FARLAND SHALONA JOLENE and HANN ROBERT WAYNE**, Nabiryo Sophia the maternal grandmother of the child **GRACE NAMUTEBI**, **MUTAWA MUHAMUDU**, the maternal grandfather of the child, and the Affidavit of the child herself, **GRACE NAMUTEBI** who is aged 13 years and has been under the care and custody of Non-governmental Organisation, M/S KIDS INSPIRING KIDS, founded by **REV. TOMI MILLS**.

Also on Court record is the Affidavit of Rev. Tomi Mills of **KIDS INSPIRING KIDS**, an Organisation operating in Uganda since 2006, and supporting vulnerable disadvantaged children such as **GRACE NAMUTEBI**. Rev. Tomi Mills not only swore a lengthy Affidavit of 22 paragraphs, outlining the background of Grace Namutebi who has been under her care, but was physically present in Court and was interviewed by this Court.

This Court has not only studied and internalised the Affidavits in support of the Application, but also considered the probation and social Welfare report prepared by the Directorate of Gender, Community Services and Production of Makindye Urban Council and signed by **MR. KASAGGA HANNINGTON**, the Ag. Probation and Welfare Officer.

The background to the Application was briefly that **GRACE NAMUTEBI** was born to the Late Nalule Amina on the 2nd day of August, 2000 at Mulago. According to the maternal grandmother Nabiryo Sophia, the father of Grace Namutebi is not known as efforts to trace him were futile. Investigations by the Probation and Welfare Officer revealed that Nalule Amina, the mother of Grace Namutebi was sent away from home after learning that she was pregnant and she stayed with Nabiryo Sophia her maternal grandmother in Wakiso Town Council from where she gave birth to Grace Namutebi.

That the child in question is below the age of 18 years as provided for in **Article 257 (1) (c) of the Constitution of the Republic of Uganda** who is currently under the care and custody of **REV. TOMI MILLS of M/S KIDS INSPIRING KIDS**. There is no one else who has expressed willingness to take care of the child apart from the Applicants herein. Given the child's situation, it is best that the child be placed with the Applicants here in as they are ready and willing to not only to provide for her in all her basic necessities of life, but to also take on parental responsibility over her.

Counsel for the Applicants submitted that the Applicants, **MC FARLAND SHALONA JOLENE** and **HANN ROBERT WAYNE** are American citizens aged 43 and 47 years respectively and are married. The 1st Applicant is said to be self employed and owns abundant health facility, where she works as a Chiropractor and Acupuncturist. The second Applicant is also said to be gainfully employed and owns **BAJA TILE AND STONE INCORPORATION**. Copies of their employment status are attached to their respective Affidavits. The Applicants learnt about the child, Grace Namutebi during their Missionary trip to Uganda and while volunteering with **M/S KIDS INSPIRING KIDS** organisation. It was further submitted that when the Applicants expressed their intentions to take care of **GRACE NAMUTEBI** to **REV. TOMMI MILLS**, that the Home Administration consented to their intentions in the interests of the benefit and welfare of the child, hence this Application.

The issues before this Court are:-

1. Whether the grant of the Legal Guardianship Order is in the best interests of the child, Grace Namutebi.
2. Whether the Applicants are suitable persons to be appointed legal guardians of the child.

As far as the first issue is concerned, my attention has been drawn to **Article 4** of the African Charter on the Rights and welfare of a child, **Article 3 of the United Nations convention on the Rights of a child** and **Section 3 of the children Act (Cap. 59), Laws of Uganda**. They all stipulate that in all decisions concerning children undertaken by any person or authority, the best interests of the child shall be the primary consideration.

In the present case, I entirely agree with the submissions by Counsel for the Applicants that the child is currently in an institution, (**M/S KIDS INSPIRING KIDS**), where she is intended to be temporarily pending availability of the best substitute care available in which she can be raised. Since the Applicants are ready and willing to provide the child with a home, I find and hold that it is ideal. This is better than an Institution which denies the children their Natural and Legal rights

of being raised and brought up by a parent or parents whether Natural or adopted. Since the child in question has lost her Natural mother and the father is not known, and the remaining maternal grandparents cannot afford to take care of her and have consented to this Application, then I find and hold that it is in the best interests of the child, Grace Namutebi that a grant of guardianship order is made.

This Court is further fortified by the Provisions of **Section 4 of the children Act, Cap 59, Laws of Uganda**. Under S.4 (1), a child is entitled to live with his or her parents or guardians. Under S.4(2), where a competent authority determines in accordance with the laws and procedures applicable that it is in the best interests of the child to separate him or her from her parents or parent, the best substitute care shall be provided for the child. And every parent, guardian or any other person having custody of a child has a duty to educate and guide, immunise, give adequate diet, clothing shelter and medical treatment to that child as provided under **Section 5 of the children Act**. Then under S.5(2), any person having custody of a child shall protect the child from discrimination, violence, abuse and neglect.

Given the background of Grace Namutebi as outlined above, and particularly that her mother is dead and she has no known father, and the grandparents are unable to assist in her upbringing, as already stated above, then this Application has to succeed.

I now turn to the second issue as to whether the Applicants are suitable guardians of the child. Counsel for the Applicants referred this Court to the Applicants' home study report, attached as annexure "F" to 1st Applicant's Affidavit. The Applicants are reported to have the financial capacity to sustain their family including the child **GRACE NAMUTEBI**. Hann Robert Wayne's annual income is US\$ 24, 592.00 while that of Shalona Jolene MC Farland is US\$ 32,415. Their total income of US\$57,007.00 is submitted to be sufficient and reliable to meet all family needs. Lastly, it was submitted that they have life insurance which will cover the child, Grace Namutebi, once placed in their care.

I have had the opportunity to study and internalise the home study report prepared by **LITTLEST ANGELS INTERNATIONAL, COLARADO**. The same is detailed and elaborate. I am therefore satisfied that the Applicants have sufficient resources to financially support another child in the family. Their monthly incomes and expenses provide more than enough financial resources to provide for everyone including the child in question, Grace Namutebi. The records also reveal that the Applicants have no criminal records as per copies of their Criminal clearance reports attached to the affidavits. They also have no history of child abuse.

I also agree with the submissions by Counsel for the Applicants that the child in question is below the age of 18 years as provided for in **Article 257 (1) (c) of the Constitution**. She is currently under the care and custody of **Rev. Tomi Mills of M/S KIDS INSPIRING KIDS**. There is no one else who has expressed willingness to take care of the child apart from the Applicants. In the circumstances of the child's situation, I find and hold that it is best that the child be placed with the Applicants who are ready and willing to provide for her basic necessities of life and take on parental responsibility over her. Furthermore, they subsequently intend to adopt and their home

study is evident of their suitability.

I also add that under **Sections 4 and 5 of the Children Act (Cap 59)**, the responsibilities and obligations of parents or guardians are spelt out. The child in question is therefore entitled to live with her guardians as the best substitute care available given the child's background. A stable home for Grace Namutebi is necessary so as to fully realise her potential. I therefore in exercise of this Court's powers under the Children's Act, Sections 98 of the Civil Procedure Act and the relevant provisions of the Judicature Act do hereby appoint the Applicants as the Legal Guardians of the child **GRACE NAMUTEBI** with orders to permit the Applicants to travel with the child to the United States of America and to subsequently adopt her.

This Court is also aware of the recent decision of the Court of Appeal in **Civil Appeals No. 70 and 81 of 2011 – in the matter of Deborah Joyce Alitubeera and in the matter of Richard Masaba respectively**. Their Lordships the Justices of Appeal not only re-echoed and emphasized the welfare Principle as the paramount consideration in cases of this nature, but they also did away with the requirement that legal guardians come back and file Applications for adoption in Uganda. The Applicants are therefore free to complete the adoption process in their home country, the United States of America.

In conclusion therefore, I am satisfied that the Legal requirements in the children Act have been met by this Application. I therefore do order that **MC FARLAND SHALONA JOLENE and HANN ROBERT WAYNE**, the Applicants be and are hereby appointed Legal guardians of **GRACE NAMUTEBI**, the child.

It is **FURTHER HEREBY ORDERED** as follows:-

1. The legal guardians shall obtain a Ugandan passport for the child using her existing Ugandan name.
2. The child must retain the citizenship of Uganda until the attainment of 18 years or such further subsequent orders of the Court.
3. The Applicants are directed to leave all their particulars; addresses, e-mail of the physical residence where the child will be residing with the Deputy Registrar of this Court, with copies to the Probation and Social Welfare Officer, Makindye Division, with Rev. Tomi Mills of KIDS INSPIRING KIDS, The National Council for Children, Ministry of Foreign Affairs in Kampala and Uganda Embassy in the U. S. A.
4. The Applicants are ordered to submit a report on the state and welfare of the child to the Deputy Registrar of this Court with copies to the Probation and Social Welfare Officer, Makindye Kampala once in a year till the child attains 18 years.
5. Any changes of address must immediately be communicated to the above mentioned authorities.
6. The Applicants will pay costs of this Application.

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W. M. MUSENE

JUDGE

2/05/2014

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