

IN RE: SENZENI MOYO

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 25 JANUARY 2013 AND 7 FEBRUARY 2013

Mr Tshuma for the applicant

Application for Guardianship

CHEDA J: On the 16th October 2012 applicant Senzeni Moyo applied for Guardianship of two minor children namely Martin Gugulethu Hamandishe (Date of Birth 3rd February 1995) and Jacqueline Nkosinotando Hamandishe (Date of Birth 2nd February 1998) at the Juvenile Court, Bulawayo. The application was granted on the 14th November 2012 by the Juvenile court. It was then forwarded to me for confirmation of the proceedings as per the usual procedure.

The background and genesis of this application is that, applicant is a State Registered Nurse residing in the United Kingdom and employed as such. The minor children are her deceased's sister and brother-in-law respectively.

Upon the death of their parents, these minor children were being looked after by their maternal grandmother, Ellie Moyo who is a retired nurse here in Zimbabwe.

Applicant now applies for their guardianship on the basis that she is a nurse in the United Kingdom and that she has been financially supporting them.

It is trite law that the High Court is an undisputed upper Guardian of all minors in Zimbabwe. For that reason, the law empowers this Court/Judge to carefully consider all factors where a minor child's or children's custody or guardianship is an issue. The court should be slow in acceding to applications to remove children from its jurisdiction. On that score, it should, in my view, do so only when it is in the interest of the said children that they be removed to a new environment, see *Chamberlain v De La Mare* CA 1983 FLR 434; and *Au v Au* CA [1979] Fam Law 116 and in RE: *Edith Hleziphi Maphosa*. In that regard any person who

desires to assume guardianship should be of both financial and social good standing to an extent of being unimpeachable, see *Re Thain v Taylor* [1926] Ch 676 at 864 CA.

An applicant who seeks to be awarded guardianship of a minor child must not only prove her relationship with the minor and some consent from other relatives, but, must submit among other requirements depending on the circumstances;

- (1) sufficient proof of her right of stay in the foreign country;
- (2) proof of financial support or regular income;
- (3) proof of suitable accommodation; and
- (4) in case of a child of school-going age proof of adequate arrangements for the child,

The list is inexhaustive. In all this, the court will always bear in mind the need for the safety and comfort of the children in the host country, see in *RE (an Infant)* 1981 (2) SA 330 (2).

The fact that the adoptive parent is in the diaspora is not enough legal reason to shepherd a minor child or children to a foreign land.

In my view if our courts fail to be stringent in their determination of such applications they may easily find themselves unconsciously assisting or abetting child trafficking.

The court *a quo* granted its order without sight of proof of applicant's socio-economic standing. There is a possibility of an error in its conclusion.

For the above reason the following order is made:

Order

- (1) The order granted by the Juvenile Court on the 14th November 2012 at Bulawayo Magistrates Court be and is hereby set aside; and
- (2) The matter is referred back for a further inquiry in line with the principles laid down in this judgment.

Kamocha J agrees.....

Web, Low and Barry, applicant's legal practitioners