

5

The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Family and Children Cause No. 0003 of 2023

And

In The Matter of Amulo Martha (11 Years) And Oluka Christian Othiel (5 Years) [Minors]

10

And

*In The Matter of an Application for Legal Guardianship by Oluka David Okwii (The Biological
Father)*

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling an application for Legal Guardianship

15

1. Introduction:

The applicant, Oluka David Okwii brought this application by way of Notice of motion under Article 139(1) of the Constitution, sections 3,4,5, & 6 of the Children's Act, section 98 of the Civil Procedure Act, sections 14,33 and 39 of the Judicature Act and Order 52 rules 1,2 & 3 for orders that;

20

a) A guardianship order of the children Amulo Martha (11 years) and Oluka Christian (5 years) be issued to the applicant with necessary directions.

b) An order authorizing all dealings on the land/ plot along Osuban Road located at Soroti Municipality, subleasing, securing loans and any other as the same may be required by the applicant.

25

c) Such orders as the court may deem fit to grant.

2. Grounds:



5 The grounds of this application as set out in the application and affidavit sworn by Oluka David the applicant are that the applicant is the biological father to the minors.

The applicant and the minors jointly own a leasehold plot along a Osuban Road located in Soroti Municipality and the applicant now seeks to deal in the property
10 by using it as security for a loan so as to meet the educational needs of the minors and build a family house.

The applicant seeks a guardianship order so as to use the suit property for securing a loan on the children's behalf, his behalf and any future dealings which are to enhance the welfare of the children.

15 The applicant was represented by M/s Ewatu & Co. Advocates and Counsel's submissions have been duly considered.

3. Determination:

There is no specific law that caters for applications for guardianship of infants and their estates. This means that most applications of this nature invoke the court's
20 inherent powers and unlimited original jurisdiction under section 98 of the Civil Procedure Act as well as sections 14 and 33 of the Judicature Act.

Such application in most instances is brought by way Notice of Motion under the provisions of order 52 rule 1 and 3 of the Civil Procedure Rules.

On the other hand, the position of the law is that when considering issues that
25 deal with children, their welfare is taken as paramount thus the provisions of the Children's Act comes into play as is elucidated in Section 3(1) of the Children Act which provides that;

The welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines any question in



- 5 **respect to the upbringing of a child, the administration of a child's property, or the application of any income arising from that administration.**

The applicant in this instant seeks to deal with the property which is stated to be a plot of land situated on Osuban Road Soroti City. The applicant states he is registered as a joint proprietor of the same together with the above named
10 minors who are his biological children whose copies of their birth certificates he attaches in proof over his fatherhood claim over them. He also attaches a copy of his national ID.

Counsel submitted that the applicant being the biological father of the minors has a constitutional duty to raise and cater for them. I agree.

- 15 Counsel further added that applicant wishes to use the land as security for a loan for the children's educational needs and building of a family house which is for the future benefit of the children.

Counsel further stated that the applicant does not have any adverse interests to those of the minors and that the minors physical, emotional and educational
20 needs would be sufficiently met by the granting the order sought herein.

He prayed this court be pleased to find it in the best interest of the children that the applicant be granted a guardianship order.

According to Article 26(1) of the Constitution of the Republican of Uganda, children just like any other citizens have a right to own property. However,
25 because here are minors aged 11 and 5 are clearly below the age of majority then the provisions of Section 11(1) (a) of the Contracts Act deems them incapable of contracting with the same.

This means that for them to benefit from the property which they own, their parents or guardians ought to apply to courts seeking for guardianship orders.

5 In this instance the property which the applicant seeks a guardianship order over is a plot of land along Osuban Road in Soroti City.

In order to prove the existence of this plot of land, the applicant attaches a copy of the Lease/Sub Lease Offer marked as Annexure 'C' to this application. This Lease/Sub Lease Offer is addressed to the applicant and the two minors.

10 The main issue for my consideration at this point is whether a Lease/Sub Lease Offer which is attached to and is the subject matter for the orders sought herein is sufficient to prove ownership of the land.

A lease offer is a document that outlines the terms of leasing a property to a prospective tenant. It is also known as a lease proposal. It is not yet a lease whose
15 purpose is to guarantee the rights of both the landlord and the tenant/lessee.

A lease is thus different from a lease offer as a lease is legal agreement between a landlord and a tenant that outlines the terms and conditions of renting a property. It is a contract that guarantees the rights of both parties involved. A
20 lease typically includes details such as the rent amount, the duration of the lease, the security deposit, the due date of rent, and the consequences of breaking the lease. There are different types of leases, such as residential leases and commercial leases.

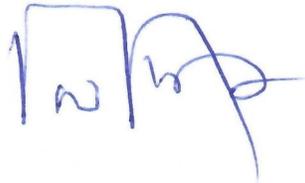
In respect of the attached Lease/Sub Lease Offer marked as Annexure 'C', I find
25 that it does not create an interest in land until actual acceptance of the offer and registration of that lease.

It is thus in the interest of the children that the applicant first obtains a proper lease agreement/ contract with the Soroti District Land Board and secure his' and the children's interest in the land before he can seeks any guardianship order over the same.

5 Consequently, I would find that this application is premature as the Lease/Sub
Lease Offer attached as Annexure 'C' is merely an invitation to treat and does not
yet create any legal interest in the suit land as it is not a Lease Agreement
/Contract. It is only until the said is accepted with its terms complied with and a
10 legal lease agreement issued over the suit land that then the applicant' and the
minor's interest can be said to be legally tenable.

Having found that this application is premature thus I would dismiss it with no
orders as to costs.

I do so order.



15

.....
Hon. Justice Dr Henry Peter Adonyo

2nd February 2024