

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY DIVISION
MISCELLANEOUS APPLICATION NO. 133 OF 2009

IN THE MATTER OF NASSIWA CHELSEA (A MINOR AGED 9 YEARS)
AND
IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP BY DAVID BALUNGA
(FATHER)

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING

This application is brought by Notice of Motion under Articles 34(1) and 139(1) of the Constitution of Uganda, 1995, Sections 14, 33 and 39 of the Judicature Act, Cap 13, Sections 3, 4, 5 and 6 of the Children Act, Cap 59, 5.98 of the Civil Procedure Act, Cap 71 and Order 52 rr 1, 2 and 3 of the Civil Procedure Act 51-71-1, for an order appointing the applicant, David Balunga, the guardian of Nassiwa Chelsea, a minor, and be allowed to transact business on her behalf and in particular deal with property, comprised in Busiro Block 444, Plot 970 at Nkumba measuring 0.079 Hectares by way of transfer, mortgage, pledge, assignment, sale or otherwise.

The application is supported by the affidavit of Mr. David Balunga dated the 25th September, 2009.

At the hearing of the application, Mr. Matovu Amir represented the applicant.

The grounds of the application set out in the Notice of Motion are;

1. That the applicant is the natural and biological father of the said minor- see the Birth Certificate on the court file attached as Annexure '1'.

2. That the said minor ordinarily resides with the applicant at their family home at Lumuli Kitende.

3. That the applicant has since the birth of the minor been and continues to be responsible for the minor's welfare including but not limited to shelter, health care, education and clothing.

4. That the minor's biological mother, Ndagire Carolyn, who was in court, has no objection to this application. —see affidavit of the mother.

5. That the applicant has since been blessed with two other children and therefore there is urgent need to provide for them.

6. That it is just and equitable that the guardianship of the minor be granted to the applicant.

Counsel for the applicant submitted that the applicant, the minor child and the mother are joint proprietors of the same land as tenants in common and since Chelsea is a minor, the above property cannot be dealt with without seeking an order from this court. That the applicant shows that it is just and equitable that the court grants him an order of guardianship to deal with the minor's interests and for her welfare.

Counsel contended that basing on Article 34(1) of the Constitution and subject to the laws enacted in their best interests, children have a right to know and be cared for by those entitled to bring them up. That section 33 of the Judicature Act provides that this Honorable court is empowered to grant orders as sought in the application as it deems fit.

Section 14 of the Judicature Act and Article 139(1) of the Constitution of Uganda give the court original jurisdiction to handle all matters in Uganda.

The power must be exercised in the best interest of the child and for her welfare — see Section 3 and paragraph 1(b) of the First Schedule to the Children Act.

The courts have granted guardianship in the following cases after being satisfied that guardianships would be for the welfare of the infant namely; ***In the matter of Sarah Namakula***

and Alex Katende-minors and In the matter of an application by Nakalika Namazi Madina to be appointed legal guardian - Misc. Application No 91 of 1993.

From the above facts and submissions of counsel, I am satisfied that the application if granted will be for the welfare and in the best interests of the child. The application is accordingly allowed.

1. The applicant, David Balunga is appointed legal guardian of Nassiwa Chelsea.
2. He is allowed to deal by way of transfer, mortgage, pledge, assignment, sale, or otherwise with property comprised in Block 444 plot 970 at Nkumba.

Margaret C. Oguli Oumo

JUDGE

29/10/09

Present:

1. Abudu Nasser Olekwa, counsel for the applicant
2. Nalongo Nandula-Court Clerk