

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

FAMILY CAUSE NO. 140 OF 2009

**IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF MARK
MULINDWA (MINOR) BY GRACE TAMALE**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicant brings this application by Notice of Motion under section 98 of the Civil Procedure Act Cap 71, Section 33 of the Judicature Act Cap 13, and Order 52 rr 1, 2 & 3 of the Civil Procedure Rules SI 71-1 in which she is seeking for the following orders:

1. That the applicant be appointed the legal guardian of Mark Mulindwa aged 14 years.
2. That the applicant executes a mortgage over Kyadondo, Block 234, plot 4054 over which Mark Mulindwa is one of the proprietors.
3. Any other orders this honorable court deems fit.

The grounds of the application are as follows:-

1. That the applicant is the biological mother of the child in issue.
2. That the applicant is the one in custody of the child in issue and the one catering for his necessities.
3. That the applicant was given the land comprised in Kyadondo Block 234 plot 4054 by his father as her share and she decided to put it into her names and the names of her son Mulindwa Mark who is the minor and David Kirya who is now an adult.
4. That she intends to borrow money to complete a house on the land in issue and to cater for other necessities of Mulindwa Mark and his elder brother.

The application is supported by the affidavit of the applicant dated 6th October, 2009.

At the hearing of the application, the applicants were represented by Serwada Angozosi.

The High Court has powers to make such orders as are necessary in the interests of justice and prevent the abuse of court process.

See: Section 98 of the Civil Procedure Act.

The child here is 14 years old. See a copy of the Baptism card attached as Annexure 'A'. In making any decision concerning a child, the welfare of the child is of paramount importance.

See: Section 3 and paragraph 1(b) of the First Schedule to the Children Act.

Counsel for the applicant submitted that the child Mulindwa Mark is the biological son of the applicant, aged 14 years — see the Birth Certificate.

That the applicant was given Kyadondo, Block 234, plot 4054 by her father and she put it in her names, Mark Mulindwa and her other son David Kirya — see copy of the Title Deed on the court file.

Mr. Serwadda contended that the applicant is in custody of the infant in issue and is the one catering for all his necessities as a single mother taking care of her two sons.

Counsel submitted that the applicant has built a 3 bed roomed house in which they stay and intends to mortgage it and invest in her business in order to look after the minor and his brother. She has a business in Kikubo. That her bank, FINA has directed her that in order to use the title as security, she has to get a guardianship order. That whatever she intends to do is for the best interest of the minor.

Under sections 3 and paragraph 1(b) of the First Schedule to the Children Act, in making any decision concerning a child, the welfare of the child is of paramount consideration. The High Court has in the case of ***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. 91/93, held that the welfare of the child is of paramount consideration.

Having perused through the application, affidavit of the applicant and having heard submissions of counsel for the applicant, I am in no doubt that the application is for the welfare of the minor and that the applicant has no interest which is adverse or prejudicial to that of the minor.

Consequently, the application is allowed in the following terms and conditions.

1. The applicant, **Grace Tamale**, is appointed legal guardian of the child, **Mulindwa Mark**.
2. The applicant is permitted to mortgage Kyadondo, Block 234 plot 4054 in her names and that of the infant and the other son, David Kirya.
3. The court makes no order as to costs.

Margaret C. Oguli Oumo

JUDGE

4/11/09

Present:

1. Mr. Serwadda Angazosi, counsel for the applicant
2. Nalongo Nandaula — Court Clerk