

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY DIVISION

HCT-00-FD-FC-0093-2009

IN THE MATTER OF MATHIAS MUTEBI AN INFANT

AND

IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY
CHRISTINE FERLAY

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. The applicant, a single female, is residing and working in this country. She cohabits with a male friend. In this application she is seeking an order of legal guardianship of Mathias Mutebi, hereinafter referred to as the infant. The applicant applied to be appointed a foster parent of the said infant and the Family and Children Court of Nabweru issued a care order dated 27th May 2009 that appointed her as a foster parent to the infant.
2. Foster parent is defined under the Children Act, Section 1 (j) as,
‘means a person not being the biological mother, father, or relative of the child who assumes parental responsibility of the child by way of a care order.’
3. Guardian is defined by the same Act, Section 1 (k) as,
‘means a person having parental responsibility for a child.’
4. In my view it is clear from the foregoing that a foster parent, appointed by the Family and Children Court, is a guardian of the infant. A foster parent is a guardian of the infant by virtue of appointment as a foster parent. A foster parent has parental

responsibility for the child. A guardian is a person who has parental responsibility for a child. So a foster parent is a guardian.

5. It would appear to me that this application is superfluous given that at law the applicant is already a guardian of the infant, albeit, as a foster parent. An appointment of the applicant as a guardian by this court adds no further value in law to her current status and responsibility as a guardian/foster parent of the infant Mathias Mutebi.
6. This application has been stated to be made under Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act and Section 3 of the Children Act. I take it that Section 33 of the Judicature Act must have been cited in error. It is a general provision relating to the power of the High Court to grant remedies. Section 14 of the Judicature Act, which deals with the jurisdiction of the High Court, providing that this court is a court of unlimited jurisdiction with jurisdiction in all matters, may be apt.
7. Section 3 of the Children Act provides that the welfare principles and the children's rights set out in the First Schedule to the Act shall be the guiding principles upon which any decision based on the Children Act may be taken. Clearly the decision sought in this application is not founded upon any provisions of the Act, and is thus not directly applicable. The decision under the Children Act was taken by the Family and Children Court of Entebbe in appointing the applicant a foster parent of the infant. That decision is not in issue here.
8. It is not in question whether this court has the power to appoint guardians. The Court of Appeal has in the cases of *In the Matter of Francis Palmer an Infant, Civil Appeal No. 32 of 2006*, and *In the matter of Howard Amani Little, an infant, Civil Appeal No.33 of 2006* held that this court has jurisdiction and authority to grant orders of legal guardianship. The decision is not clear in what circumstances this jurisdiction may be exercised. Two judges that agreed that this court has jurisdiction did not agree on the circumstances in which such jurisdiction may be exercised.
9. Under the common law this court has the jurisdiction to appoint guardians for infants both in respect to their persons and or to their estates. See *In the Matter of Kenneth Kintu an Infant: HCT-00-FD-FC-0112-2008 (unreported)*.
10. I have noted above that in law the applicant is a legal guardian of the infant in question already. And that this application, at law, would be superfluous. However, since I am required to declare that which is the case already, for the avoidance of doubt, I do declare the applicant a legal guardian of the infant, Mathias Mutebi.

Signed, dated and delivered at Kampala this 21st day of July 2009

FMS Egonda-Ntende

Judge