

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY DIVISION

FAMILY CAUSE NO. 094 OF 2009

**IN THE MATTER OF THE GUARDIANSHIP OF KASOZI MOSES (MINOR AGED 14
YEARS)**

AND

**IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP BY MARIAM
HABIBU ATIB (APPLYING THROUGH ISMAIL ATIB, AS DONEE OF POWER OF
ATTORNEY)**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicant brings this application by Notice of Motion under Article 13 & 9(2) 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, Section 98 of the Civil Procedure Act, cap 71 and Order 52 rules 1,2 and 3 of the Civil Procedure Rules, S1-71-1 in which the applicant is seeking for orders that:-

1. The applicant be appointed the legal guardian of Kasozi Moses, a minor of 14 years ;
2. The applicants be granted custody of the said minor, Kasozi Moses.
3. The costs of the application be provided for.

The application is supported by the affidavit of the Applicant dated 26th March, 2009, the affidavit of Lumala Rogers, the biological father of the child, dated 29th November, 2007 and that of Ismail Atib, the donee of the applicant's power of Attorney , dated 26th March, 2009.

The grounds of the application are as follows:

- a) That the applicant is the natural and biological mother of the minor child herein.
- b) That the applicant has since the birth of the child been and continues to be responsible for the minor's welfare including but not limited to shelter, healthcare, education and clothing.
- c) That the applicant is a citizen of the Commonwealth of Australia.

At the hearing of the application, the applicant was represented by Mr. Richard Omongole.

The High Court has original unlimited jurisdiction on all matters in Uganda.

See: Article 139(1) of the Constitution, 1995.

The Judicature Act, Section 14, on similar terms gives the same jurisdiction to the High court.

The High Court has powers to grant remedies absolutely or on such terms as it thinks fit.

See: Section 33 of the Judicature Act.

Similarly, under section 98 of the Civil Procedure Act, the High Court has powers to grant such remedies as are necessary in the interests of justice and to prevent the abuse of court process.

A child has been defined as any person below 18 years of age.

See: Section 2 of the Children's Act, Cap 59.

The child here is 14 years of age. See copy of the birth certificate on the court file.

Issue No. 1: Whether the application is for the welfare of the child and in his best interest?

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, Cap 59.

Mr. Omongole, learned counsel for the applicant submitted that since the birth of the minor, the applicant has been and continues to be responsible for the minor's care by paying for his accommodation, food and clothing. The whereabouts of the child's father is not known.

If the grant is given the child will be able to go and live with his mother.

In view of the above, the court is of the view that this application, if granted will be for the welfare and benefit of the minor.

The second question is whether the applicant is a suitable guardian for the child?

Mr. Omongole submitted that, the applicant is the biological mother of the minor and a citizen of Australia. See a copy of her passport attached on the court. That since the birth of the minor, she has been and continues to be responsible for the minor's care by paying for his accommodation, food and clothing.

That the applicant is a Registered Nurse – see covering letter from her employer and paragraph 4 of her affidavit in support. Mr. Omongole contended that the applicant has adequate resources and financial means to take care of the minor in Australia and that being the biological mother, she is most suitable to be the guardian of the child and have his custody.

Mr. Omongole argued that the whereabouts of the minor's father is not ascertained. That with due and reasonable diligence, the applicant has attempted to ascertain his whereabouts to no avail.

The father himself had given his consent to the application. See 'No objection letter on the court file. Counsel for the applicant argued that in paragraph 7 of her affidavit in support, it is alleged that the father could have immigrated to England. Both the applicant and her donee of Powers of Attorney, depone that she has the financial means to cater for the child in Australia.

Mr. Omongole submitted that Section 4 of the Children's Act, provides for the child to live with his parents, guardians and the minor can be given that opportunity in Australia.

Mr. Omongole relied on the case of *In Re: Maria Nalugya (An Infant) 1997, V. KARL 134*, where the principle under section 4 was emphasized. He also cited *In Re Jane Nakintu and 2 others, 1997.V. KARL 138* which lists the persons who are entitled to guardianship as per section 4 which includes parents.

Learned counsel contended that, the applicant has been taking parental responsibility for the child since birth and it is proper that she be given guardianship of the child.

In view of the above, court is of the view that the applicant is the biological mother of the child and has been taking care of him since birth and that the father's whereabouts are not known.

Court is also of the view that the applicant, being the mother has the responsibility to look after the child and stay with him and this can only be done if she has custody and guardianship of the child.

In view of the above, court is of the view that the applicant is a suitable guardian for the child.

Consequently, the application is granted in the following terms and conditions:

1. The applicant is appointed legal guardian of the minor, Kasozi Moses.
2. The applicant is granted legal custody of the minor Kasozi Moses.
3. The applicant is directed to register the order with the Registrar of Documents, Uganda Registration services Bureau, Ministry of Justice and Constitutional Affairs, Kampala.
4. The applicant is directed to obtain a Ugandan passport for the child and to renew it from time to time as required by the law.
5. The applicant is permitted to travel out of Uganda with the child.
6. The applicant is directed to register the child with the Australian Embassy in Nairobi, and the Ugandan Counsel in Australia.

7. The court makes no orders as to costs.

Margaret C. Oguli Oumo

JUDGE

30/09/2009

Present:

1. Counsel for the applicant
2. The applicant
3. Nalongo Nanduala – Court Clerk
4. Nyakwebara Elizabeth – Research Assistant