

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 109 OF 2009

IN THE MATTER OF THE JUDICATURE ACT, CAP 13

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY CLARE
PAGLIUCOLI MUGISHA (MOTHER)**

AND

**IN THE MATTER OF MICHAEL ETHAN ROUSSOS (MINOR), VICTOR NICHOLAS
ROUSSOS (MINOR) AND DAPHNE GENEVIEVE ROUSSOS (MINOR)**

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicant brings this application under section 98 of the Civil Procedure Act Cap 71 and Order 52 rr 1&2 of the Civil Procedure Rules SI 71-1 in which the applicant seeks for orders that;

1. The Applicant be appointed legal guardian of her infant children; Michael Ethan Roussos (minor), Victor Nicholas Roussos (minor) and Daphne Genevieve Roussos (minor).
2. Costs of the application be provided for.

The application is supported by the affidavit of the applicant dated 24th August, 2009.

The grounds of the application are:-

1. That the applicant is the natural mother of the minors – copies of their respective passports are attached and marked Annexures ‘A’, ‘B’, ‘C’ respectively. Copies of their Birth Certificates are also attached.
2. That the children’s father, Nicholas Roussos died on 25th September, 2008.

3. That the applicant has had custody of the said minors since their birth.
4. That the deceased made provision for the children in his will –a copy is annexed.
5. That the will has not been executed.
6. That the application is to enable the applicant pursue the children's claims from their late father's estate for their best interests.
7. That it is in the interest of justice that the application is granted.

At the hearing of the application, the applicant was represented by Mr. Enock Barata.

The High Court has original unlimited jurisdiction in all matters

See: Article 139(1) of the constitution.

See: Section 14 of the Judicature Act.

In the exercise of that jurisdiction, the High Court has inherent powers to grant such remedies as are necessary in the interests of justice, and to prevent the abuse of court process.

See: Sections 98 of the Civil Procedure Act.

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

See : Section 2 of the Children Act.

The children here are:

1. Michael Ethan Roussos aged 4 years,
2. Victor Nicholas Roussos aged 8 years,
3. Daphne Genevieve Roussos aged 9 years.

Counsel for the applicant, Mr. Barata submitted that the father of the children was the late Roussos who died on 25-9-08, and that the applicant has remained with the custody of the children.

Mr. Barata submitted that the father of the children left a Will – see a copy of it on the court record, in which he provided for them. That the terms of the Will have not been effected by the grant taken out by the Bishop of the Orthodox Church who is based in Mwanza, Tanzania.

Mr. Barata contended that the application is seeking a legal guardianship order in order to put her in a good legal position to be able to come back before this court and seek intervention and orders of court that the will be effectuated in the best interests of the children.

Under section 3 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 importance.

In the instant case, the applicant is the natural mother of the children. She has had their custody since their birth. The father of the children died a year ago and apart from obtaining the grant, the executor has not done anything to effect the Will yet the children need maintenance, education and a roof over their heads.

In view of the above, court is of the view that the application, if granted will be for the welfare of the children.

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

1. The applicant is granted legal guardianship of the children, Michael Ethan Roussos, Victor Nicholas Roussos and Daphne Genevieve Roussos, with full parental rights and responsibilities.
2. The court makes no order as to costs.

Margaret C. Oguli Oumo

JUDGE

8/10/09

Present:

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

