

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 120 OF 2009

IN THE MATTER OF DAVID MARK KABWIGU KIRUNDA

AND

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY DANIEL
KIRUNDA MISANGO.**

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, O.52 rr1&3 of the Civil Procedure Rules SI71-1 , in which the applicant is seeking for the following orders:-

That the applicant be appointed legal guardians of the child David Mark Kabwigu Kirunda.

At the hearing of the application, the applicant was represented by Mr. Twinomugisha Nathan.

The grounds of the application are as follows:-

1. That the child is aged 15 years of age and therefore still a minor.
2. That the child is the biological son of the applicant.
3. That the child is one of the registered proprietors of the land described as Plot No. 6, Block No 184 Kyaggwe.
4. That the child together with the rest of the registered proprietors of the above mentioned land wishe to sell the land.

5. That owing to the child's age, he cannot enter into any contract legally except through a legal guardian.
6. That it is in the best interest of the child that the land aforementioned be sold in order to provide for the said child.
7. That it is in the best interest of the child that the applicant be granted legal guardianship so that the guardian can enter into contract with an intending purchaser for the land.

At the hearing of the application, the applicant was represented by Mr. Twinomugisha Nathan.

The High court has original jurisdiction in all matters.

See: Article 139 of the Constitution of Uganda, 1995.

See: Section 14 of the Judicature Act.

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

See: Section 33 of the Judicature Act.

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

See: Section 98 of the Civil Procedure Act.

A child has been defined as nay person below 18 years.

See section 2 of the children Act.

The child here is 15 years of age as evidenced by his birth certificate on the court file.

The child here is one of the registered proprietors of land in Block 184, plot 6, land at Buligobe. See copy of the title deed on the court file.

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 of the Children Act, Cap 59.

The High Court has on many cases granted guardianship to the parents in similar cases namely; In Re: An Application for Guardianship of Duncan Mugero Wampande and Martha Mugero Nabirye (minors) by Mugero Christopher (Family Cause No 50 of 2006)[2005] UGHC 34(22 November 2005) in which J Mwangusya held that “ *the purpose of the application for guardianship orders is to get access to some money left in trust for the infants so that he can use it for their maintenance. That the money was left by their mother who was taking care of them and his access to the funds will enable him cater for their interest;*”

and in the case of In Re: The children’s Act cap 59; In Re: An Application for a Guardianship Order by Asimwe Adidas (father);In Re: Asiba Junior, Kobusingye, Sylvia, Katusiime Lilian, Bihemaiso isingoma and Baguma Keith, (Family Cause No. 029 of 2006) [2006] UGHC 12[19 April 2006], in which J. Mwangusya in an application where a father was applying for legal guardianship of his two children who were registered proprietors of land, held that; *the applicants and the minors are registered as joint tenants on registered land in LRV volume 3060, Folio 15 land described as plot 17, Magungu Lake Masindi town. As a result of the applicants’ failure to raise school fees so that these minors, he intends to mortgage the property so that he obtain funds for investment for the purpose of raising school fees so that the minors can further their education. He cannot deal in this property unless he has got a guardianship order for the other joint tenants who are all minors”*

That the guiding principle in applications of such nature under S.3 of the Children Act is the welfare of the children.

That this children need education and it is in their interest that their father raised funds to cater for their education and other needs. And In Re: An application for Legal Guardianship of Minors by Margaret Kamuzana & In Re: Bulemezi Block 160 Plot 162, Land at Lutamu B (Family Cause No. 39 of 2006)[2006] UGHC.63 27 April 2006). J. Remmy Kasule held that *the applicant is seeking the guardianship for the welfare of the minors and as the appointed guardian, the applicant was authorized to mortgage, transfer, tender as security and to deal in any way whatsoever she deemed appropriate in the land comprised in Bulemezi Block 160 Plot 162 at Lutamu, registered in the names of the minors.*

In the instant case, counsel for the applicant, Mr. Twinomugisha submitted that the applicant seeks to be appointed legal guardian of his son David Mark Kabwigu Kirunda. That the applicant is the father of the child who is a minor of 15 years. Mr. Twinomugisha contended that the child is the registered proprietor of land comprised in Plot 6, block 164 Kyaggwe together with his siblings. Mr. Twinomugisha argued that the applicant is desirous of obtaining the orders so that he can legally sell part of the land in order to raise fees for the infant who is a student at Vienna International School in senior four. That is it in the best interests of the infant since he has looked after the infant since he was born. That the court be pleased to grant the order, so that the applicant as a guardian can raise fees for the infant to continue with his education.

In view of the above, court is satisfied that the child is the registered proprietor of the land in issue as per the copy of the title deed on the court file; that the child is a minor and cannot legally transact any business with the property. That the application is for the best interests of the child as the funds are to enable the applicant raise school fees for his son's education.

Court is also satisfied that the applicant has no interest which is adverse or prejudicial to that of the infant.

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

1. The applicant is appointed the legal guardians of his son David Mark kabwigu Kirunda.
2. The applicant is particularly authorized to transfer part of the land comprised in Plot 6, Block 184 Kyagwe, registered in the names of the minor and his 2 siblings.
3. The court makes no order as to costs.

MARAGARET C. OGULI OUMO

JUDGE

21-10-2009.

Present

1. Mr. Twinomugisha Nathan-Counsel for the applicants.
2. Nalongo Nadaula-Court Clerk
3. Nyakwebara Elizabeth-Research Assistant.