

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 124 OF 2009.

IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF OJA MARTIN

KENYI PETER

(A MINOR)

BY MARTIN TERENSIO LEMO KENYI (FATHER OF THE MINOR)

AND

IN THE MATTER OF SECTION 3 AND PARAGRAPH 1(b) OF THE FIRST SCHEDULE

TO THE CHILDREN ACT, CAP 59.

BEFORE: HON. LADY JUSTICE MARGARET C. OGULI OUMO

RULING:

The applicant brings this ex parte application under section 3 and paragraph 1(b) of the first schedule to the Children Act Cap 59, in which he is seeking for following orders:-

1. That martin Terensio Lemo Kenyi be appointed legal guardian of his son Oja Martin Kenyi Peter for the purpose of mortgaging property comprised in Kyadondo block 246 plot 1376, land at Kyeitabya.
2. That costs of the application be met by the applicant.

The application is supported by the affidavit of the applicant dated the 7th September, 2009.

The grounds of the application are:-

1. That Oja Martin Kenyi Peter, a minor, is registered as proprietor of land comprised in Kyadondo, Block 246 plot 1376 land at kyeitabya.

2. That Oja Martin Kenyi Peter is a minor and shall be so until 2014. He is currently in school.
3. That Martin Terensio Lemo Kenyi has custody of the said minor and is desirous of mortgaging the land to generate income for the minor's education and maintenance.

At the hearing of the application, the applicant was represented by Mr. Mathias Ssekatawa.

The High Court has original jurisdiction in all matters.

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

See: Section 14 of the Judicature Act.

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

See: Section 2 of the Children Act.

The child here is 13 years of age as deponed by the applicant in paragraph two of his affidavit in support.

The Issue is whether the application is for the welfare of the child and in his best interest?

Under Section 3 and paragraph 1(b) of the first schedule to the Children Act, in making any decision concerning a child, his or her welfare is of paramount importance.,

The High Court has on numerous occasions held that in such cases as the present, the welfare of the child is of paramount importance as was held ***In Re Sarah Namukula and Alex Katende – Misc. Application No. 92/93.***

In the instant case, counsel for the applicant submitted that the applicant is the true and natural father of the infant – as per paragraph two of the applicant's affidavit. Mr. Sekatwa

submitted that the child was born 10-11-1990, and that he is now 13 years old. That the child is in P.4 at St. Noa Junior School. Mr. Ssekatawa, submitted that the applicant deponed that on 22-11-08 he purchased this property as per the Sale Memorandum attached as 'B1' to the application. That he caused it to be registered in his child's name as evidenced by Annexure 'C', a letter from Mr. Golooba Haruna, Ag. Commissioner for Land Registration, Ministry of Lands and Urban Development. That the applicant is in possession of the Duplicate Certificate of Title which was shown to court. Mr. Ssekatawa argued that the applicant really believes that it is in his son's best interest that the court appoints him as guardian to enable him mortgage the property and ultimately generate income for the maintenance and education of the child.

In view of the above, court is of the view that the application if granted will be for the best interests of the child. That he applicant has no interest which is adverse or prejudicial to that of the child.

Consequently, the application is allowed in the following terms;

1. The applicant is appointed legal guardian of his son Oja Martin Kenyi Peter.
2. The applicant is authorized to mortgage the property comprised in Kyadondo Block 246, Plot 1376 land at Kyeitabya.
3. The court makes no orders as to costs.

MARGARET C. OGULI OUMO

JUDGE

6/10/2009

Present

1. Ssekatawa Mathias for the applicant.

2. Nalongo Nandaula-Court clerk
3. Nyakwebara Elizabeth-Research Assistant