

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY CAUSE NO. 79 OF 2010

IN THE MATTER OF LAWRENCE PIUS SERWANJA MUKASA (INFANT)

AND

**IN THE MATTER OF AN APPLICATION BY MUKASA RESTY NAKIGULI TO BE
APPOINTED LEGAL GUARDIAN OF LAWRENCE PIUS SERWANJA MUKASA**

BEFORE: HON. LADY JUSTICE MARGARET C OGULI OUMO

RULING:

This is an application brought by the applicant, seeking for orders that;

- a) She be appointed legal guardian of the infant.
- b) It is in the best interests of the infant that legal guardians over him be granted to the applicant.
- c) That the appointment of the applicant as legal guardian will not in any way be detrimental to the infant.
- d) That the applicant bears the costs of the application.

The application is supported by the affidavit of the applicant dated the 13th day of May, 2010.

The grounds of the application are briefly that:-

- 1) The infant, Lawrence Pius Serwinja Mukasa, was born on 29th February, 1996.
- 2) The father of the infant, the late Mukasa Lawrence passed away on 23rd July, 2001.
- 3) The biological mother of the infant is the applicant.
- 4) Upon the death of the infant's father, the applicant has since continued to look after the infant although with enormous difficulty.

- 5) From the death of the infants' father, the infant has always been in the custody and under the care of the applicant.
- 6) Other than the applicant, there is no other person who is ready, willing, and best suited to look after the infant.
- 7) The applicant is ready and willing to continue to cater for the general welfare of the infant until he attains majority age.
- 8) It is in the best interests of the infant that legal guardianship over him be granted to the applicant.
- 9) The appointment of the applicant as guardian will not in any way be determined to the welfare and best interests of the infant.

At the hearing of the application, the applicant was represented by Mr. Ahmed Mukasa.

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

See: Article 139(1) of the Constitution of Uganda.

Section 14 of the Judicature Act on similar terms grants the same jurisdiction to the court.

In the exercise of that jurisdiction, the High Court has powers to grant remedies absolutely or on such terms as it thinks fit.

See: section 33 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 4 years and therefore a child within the meaning of the Act.

In making any decision concerning a child, the welfare of the child is of paramount consideration.

See Section 3 and Paragraph 1(b) of the First Schedule to the Children Act.

The High Court has in a number of cases decided that in making any decision concerning a child, the welfare of the child is paramount.

See Sarah Namakula v Felix Katende – Misc. Application No. 92/93.

See in the matter of an application for guardianship of *Hillary Mujuluzi Manike (minor) by Lydia Milly Sozi and in the matter of Misc. Application No. 32 of 2001* and in the matter of *Rogers Wantanda (a minor) and in the matter of Lillian Matara, for legal guardianship. Misc. application No. 35 of 2000*, court in both cases held that, in any matter concerning children, the welfare of the child is paramount.

Counsel for the applicant submitted that, the father of the child passed away on 23rd July, 2001 and the applicant has thereafter continued to take care of the infant against great difficulty. See Annexure “B” – death certificate of the father of the child/husband of the applicant.

That the applicant has since continued to take care of the infant but has come under core difficulty in doing so. That she is under immense difficulty in doing so.

That the applicant can hardly afford his school fees and the other necessitates of life yet these are so crucial for his wellbeing.

That the infant owns property known as Block 214, plot 1682, which the applicant wishes to mortgage with Nile Breweries to secure more supply of beer and other proceeds when the company manufactures, which she intends to sell and take care of the infant.

Counsel contended that, this would boost her financial muscle to take care of the infant’s needs.

That the title cannot be mortgaged unless an order of guardianship is issued by this honorable court.

Mr. Mukasa argued that, the applicant has done her best to fulfill her constitutional duty and obligations and is willing to continue doing so but she needs to improve her services by mortgaging the property, the proceeds of which will be used to cater for the welfare of the said infant, until he is of majority age.

That it is trite that the guiding principle in application of this nature is the welfare and best interests of the child; **under section 3** of the Children Act, and **Paragraph 1(b)** of the first schedule to the same Act.

In the instant case, court is satisfied that, the applicant has no interest which is adverse or prejudicial to the child. That the application is for the welfare and in the best interests of the child –Lawrence Serwanja Mukasa.

Consequently, the application is allowed and the applicant is appointed legal guardian of the child, Lawrence Pius Serwanja Mukasa.

1. The applicant is permitted to mortgage the land comprised on Block 214, Plot 1682, now registered in the names of the minor child – see copies of the title deed on the court record.
2. The costs shall be borne by the applicants.

Margaret C. Oguli Oumo

JUDGE

18/10/2010

Present:

1. Ahmed Mukasa for the applicant
2. The applicant.
3. Betty Lunkuse, court clerk
4. Oliver Nantamu, Research Assistant.