

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
MISCELLANEOUS CAUSE NO. 36 OF 2022
IN THE MATTER OF MUSANA ISAAC WESONGA (A CHILD)

AND

IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP BY
MUSANA MJWADI ABRAHAM (FATHER)

BEFORE HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA

RULING

The Applicant, Mr. Musana Njwadi Abraham presented an application for guardianship under Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act, the Children Act and the Civil Procedure Rules.

This application seeks for orders that the Applicant be appointed legal guardian of Musana Isaac Wesonga (a minor), the Applicant be allowed to sell a piece of land located at Bugumba 'B'/Wanasi 'D' Village, Iganga District and that the costs of the application be provided for.

The Applicant seeks to be appointed the legal guardian of Musana Isaac Wesonga who is his biological son.

The sole purpose of this appointment that he seeks from Court as a legal guardian is for him to be authorized to dispose of customary land located at Bugumba 'B', Northern Division, Iganga Municipal Council measuring 51ft by 102ft. According to the sale of land agreement this piece of land borders Hassani to the West and Mr. Eleso to the South.

The brief grounds of this application are:

That the land was bought on 22nd January 2015 by the Applicant in the names of Musana Isaac Wesonga, currently seven years of age and therefore a minor.

That the Applicant, being the biological father of the child, has full responsibility of taking care of the child and has ensured that the child has all the essential needs since the child's birth.



11.10.2022

That in order to take care of the child, it has become necessary that the Applicant disposes of the said land.

The application is supported by an affidavit in which he expounded on the above grounds

That the Applicant shall utilize the proceeds from the sale of the said land to care for the child and ensure that the welfare and best interests of the child are catered for.

That the proceeds from the disposal of the said land shall be utilized to purchase an alternative piece of land on which a goat farming business shall be established in order to generate income that will cater for the child's tuition fees.

That the Applicant does not have any criminal records in Uganda or any other country.

The Applicant appeared in court together with the mother of the child, who identified herself as Hannah Tibenda and the child, Musana Isaac Wesonga.

The supporting documents to the application included a recommendation letter from the LC 1 Chairperson of Bugumba Upper Cell, a copy of the sale agreement of the land dated 22nd January 2015 and a copy of the Applicant's National Identity Card.

It is important to note that the Applicant had previously filed Miscellaneous Cause No. 28 of 2022 which was withdrawn.

Representation

The applicant was represented by Mr. Abraham Mumbere.

In arriving at its decision, Court considered two issues in consideration of this application as follows;

1. Whether the Applicant should be granted legal guardianship over his child for purposes of disposing of the child's property (land.)
2. Whether it is in the best interests of the child that the applicant be granted a guardianship order.

RESOLUTION

I shall now turn to the determination of the issues.

1. Whether the Applicant should be granted legal guardianship over his child for purposes of disposing of the child's property.



11.10.2022

It is trite law that when considering the issues to deal with children, their welfare is paramount as stipulated under Section 3 (1) of the Childrens Act. In all matters concerning children, the best interests of the child shall be the primary consideration. This principle was upheld in the decision of Deborah Joyce Alituubera Civil Appeal no. 70 of 2011 and Mark Siduda Trevor (an infant) Family Cause No. 213 of 2014).

According to Bromley's Family Law, 8th Edition, at page 336, it is stated that "..... the children's welfare is the Court's sole concern....." It is therefore paramount for court to establish the relationship between the person seeking legal guardianship and the child in order to ensure that the best interests of the child will be achieved.

On the court record, there is no Birth Certificate to prove that the Applicant is the biological father of the child and that Hannah Tibenda is the biological mother of the child. Section 39 (3) of the Registration of Persons Act of 2015 provides that the information contained in a Birth Certificate is presumed to be correct and it may be received as evidence in any judicial proceedings. The Handbook for Birth Registration in Uganda (October 2019) at page 11 defines Birth Certification as the issuance by the Civil Registrar of a legal document certifying the birth of a child and associated characteristics. It is further explained at page 13 of this Handbook that a Birth Certificate is the first proof of legal identity for the child and proof of their existence by law both nationally and internationally. The Applicant mentions in his application and supporting affidavit that he is the biological father of the child, however, the absence of a birth certificate on the record clearly brings into issue as to whether the Applicant is the true biological father of the child.

I am also alive to the principle that the biological father of the child is the best person to provide care for the child until the minor is of age which principle was upheld in the case of Re Trevor Mugumu Family Cause no. 68 of 2019. However, much as I would wish to grant this application, there is no conclusive evidence to prove that the Applicant is the biological father of the child.

On being the caretaker of the child, the Applicant did not provide sufficient evidence to prove that the Applicant is indeed the care taker of the child. In my opinion, the applicant ought to have demonstrated that he is the child's caretaker by producing supporting documentation such as medical bills for the minor and paid-up bank slips for the minor's tuition fees in previous years.



11.10.2022

The sale agreement presented to court indicates the purchaser as Musana J. Wesonga yet the infant in issue is Musana Isaac Wesonga. Court sought clarity on the correct name of the child which appeared as Musana J. Wesonga on the sale of land agreement contrary to Musana Isaac Wesonga that appeared in the application. Court inquired as to whether the child had any name starting with the letter "J." In his response, the Applicant explained that the child had no name starting with the letter "J" and therefore the inclusion of the letter "J" on the sale of land agreement was a typographical error. The Applicant ought to have presented a Statutory Declaration explaining the inconsistencies in the name of the child as it appears on the sale of land agreement and in the application.

It is ambiguous that the Applicant's name does not appear anywhere on the sale agreement on the court record yet the Applicant claims that he bought the land in the child's name to cater for the child's current and future needs. The sale agreement as ought to have been signed by the Applicant on behalf of the child.

Due to the grave inconsistencies in the documents supporting the Application and lack of sufficient evidence to support it, the Applicant has failed to satisfy Court that he should be granted legal guardianship of the minor.

Issue two automatically fails since Issue one is resolved in the negative.

The Application thus fails.

I so Order.



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Faridah Shamilah Bukirwa

Judge.

11th October 2022.