

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT LIRA
FAMILY CAUSE GUARDIANSHIP APPLICATION NO. 018 OF
2023
IN THE MATTER OF CHRISTIAN LAXMAN OMARA (MINOR)
OF BAROPUU “B” CELL BOROBORO WEST WARD, LIRA CITY
EAST DIVISION, LIRA CITY, UGANDA
AND
IN THE MATTER OF PETITION FOR LEGAL GUARDIANSHIP
BY JOHNSON OCOL OF BAROPUU “B” CELL, BOROBORO
WEST WARD, LIRA CITY EAST DIVISION, LIRA CITY,
UGANDA.

BEFORE: HON. JUSTICE DUNCAN GASWAGA

RULING

- [1] The petitioner brought this application for legal guardianship under Sections 3,4(1) (j), 43A, 43B of the Children’s Act Cap 59 as amended for orders that; *an order for guardianship of Christian Laxman Omara (Minor) be made by this honourable court to the petitioner; that the interest and title of Christian Laxman Omara (Minor) on land comprised in Plot 8076 land at Maganjo “B”, Wakiso District, be transferred to Gabriel Dokotum, to co-own the said land with the petitioner; that such further order be made as the nature of the case may require; costs of this petition be provided for by the petitioner.*
- [2] The grounds of this petition are that; *the petitioner is desirous of obtaining legal guardianship of Christian Laxman Omara*

(minor) under the provisions of the Children's amendment Act of 2016; the petitioner Johnson Ocol is a resident of Baropuu "B" Cell, Boroboro West Ward, Lira City East Division, Lira City, Uganda; the petitioner is the Managing Director of Days inn Hotel Limited located in Lira City, and the Managing Director of M.T Oil (U) Limited, and J.B United Civil Engineering and Building Contractors Limited, both having offices in Lira City; the petitioner is 56 years of age, and lawfully married to Dr. Juliet Adongo Ocol, the mother of Christian Laxman Omara (minor); the minor is aged 13 years, a pupil at Hillside Primary School, Naalya, Wakiso District, and the Petitioner is the one paying his school fees including provision of the basic necessities of life and catering for his general welfare; the petitioner and the minor are joint registered proprietors of the following pieces of land: Land comprised in Freehold Register Volume 1482, Folio 11, Plot 27 Ayena Malire Road, Lira City, measuring approximately 0.131 hectares; Private Mailo Land comprised in Block 217 Plot 1037, Kiwatule, Kyadondo, Mengo District; and Freehold Register Volume HQT522, Folio 9, Plot 81 and 83 at Ireda Lumumba, Lira City; the petitioner and the minor are also joint registered proprietors of land comprised in Plot 8076, Kyadondo Block 203 land at Maganjo "B" Wakiso District, measuring approximately 0.108 hectares; the petitioner has applied for extension of lease of the said Plot 8076, Wakiso District, and has made payments to Buganda Land Board for the said extension of lease and amalgamation of the said plot with another adjacent piece of land that the petitioner bought on 23/05/2019; that a one Gabriel Dokotum,

another biological son of the petitioner does not own any piece of land but Christian Laxman Omara already has four pieces of land whose details are shown under paragraph 6 of the petition; the petitioner has realized the need for equitable distribution of land among his children so as to avoid conflict among his children after his demise and thus, the petitioner wish to transfer the interest and title of Christian Laxman Omara (minor), Plot 8076 land at Maganjo "B", Wakiso District, to his other son Gabriel Dokotum, to co-own the said land with the petitioner; the petitioner and the minor shall continue to co-own the pieces of land whose details are already shown.

- [3] **Section 43A. of the Children Act as amended** provides thus;

43A. Legal guardianship

(1) This part applies to the guardianship of children in Uganda by citizens of Uganda.

(2) A person who is not a citizen of Uganda shall not be eligible to apply for legal guardianship.

Section 43B of the same law reads thus;

"application for legal guardianship of a child may be made by any person who is above the age of eighteen, shall be made to the High Court; shall be by petition in the form set out in the third schedule and shall be accompanied by a report of the probation and social welfare officer."

- [4] Mr. Johnson Ocol is a fifty-six-year-old, adult Ugandan and is fit to present an application for guardianship before this honourable court.

In Re: An Application for Guardianship by Wandera Peter
Family Cause No. 004 of 2017 Mubiru, J defined a guardian

as;

“a person who is given the legal power to make decisions for another person because he/she is considered not competent to decide for him or herself. Guardianship is thus the legal relationship between a competent adult (Guardian) and a person who because of incapacity such as minority is incapable of taking care of his or her own affairs (the ward). The guardian makes decisions on behalf of the ward. The Guardian by virtue of that status is authorized to make legal, financial, shelter, education, food and health care decisions on for the ward but may be required to seek court’s approval for various decisions especially those regarding the investment and disposal of the property of the ward. A Guardian must always act in the best interest of the ward. In such cases, the Guardian will manage the ward’s finances and property and provide records to the court.”

- [5] In considering issues regarding the child, care must be taken to ensure that the best interests of the child are catered for. As such the welfare principle is of much importance herein.

Section 3(1) of the Children Act Cap 59 as amended,

(1) The welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the

administration of a child's property, or the application of any income arising from that administration.

[6] As rightly stated by the applicant, a guardian ought to act only in the best interests of the minors; manage the property and any activities thereon with utmost care; to keep the money and property of the minors separate from his own; to keep good records pertaining to the properties as he is accountable to the court because he becomes an agent of court with regards to the children's properties. See **In the matter of Kyeswa a (minor until 2030), Batwawula (minor until 2027) and Sebaduka (minor until 2014) [2019] UGHCFD 10.**

[7] According to the case of **Trevor Mugumu (Minor), Family Cause No. 68/2019** it was opined that;

"In my view a biological parent is the best person to provide care for the child and ensure that the child's rights, including property rights are protected and preserved until he/she is of age. In most instances the child has to come to own property because the parent has gifted or bequeathed it. So where a child has property it should in the most ideal situations be protected by the biological parent until the child is of age."

[8] In the current application, the applicant stated that he is the biological father of the minor and is currently in charge of his personal and basic needs like education and livelihood. With this background, I have no doubt that he is capable of

carrying out his parental responsibilities and as well as those of the guardian ably to the required standards. This firm belief is cemented more by his desire to have the pieces of land on which he is jointly registered with the minor, Christian Laxman Omara, equitably distributed between his two sons in order to avoid any conflicts in case of his demise. Moreover, the biological mother of both of the concerned minors who is also the wife of the applicant, Dr. Juliet Ocol, has offered spousal consent to the said transfer. **(See Letter dated 14/07/2023, addressed to this Court)** and the Court is satisfied with the said consent although she was not physically present in court on the date of hearing the application because she had travelled to Dar-es-Salaam on official duties as per her letter dated 14/07/2023 (supra). I have also had opportunity to peruse all the pleadings filed and attachments made thereto including the relevant certificate of title **(See Annexure "G")** and the sale agreement **(See annexure "H" ("H5"))** reflecting Mr. Johnson Ocol as the buyer of the subject property. The Court is therefore satisfied that with this transaction the applicant is trying to re-organize his family affairs and these intentions indeed seem to be in the best interests of both his children and the entire family. As such, I am further persuaded that the best interests of the children (minors) herein will be met and protected in this regard and thereby cause no injustice.

[9] Accordingly, this application is hereby allowed with the following orders;

- a. That the petitioner, Johnson Ocol, be and is hereby granted an order of guardianship in respect of the child Christian Laxman Omara (minor)
- b. That the petitioner is hereby allowed to cause the transfer of the interest and title of Christian Laxman Omara (minor) on land comprised in Plot 8076 land at Maganjo "B", Wakiso District, to Gabriel Dokotum to co-own the same with the petitioner.
- c. That the petitioner shall register the order herein with the Uganda Registration Services Bureau within fourteen days from the date herein.
- d. That the costs of this application shall be borne by the petitioner.

I so order

Dated, signed and delivered at Lira this 22nd day of August,
2023.



Duncan Gaswaga

JUDGE