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**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
(FAMILY DIVISION)**

**LEGAL GUARDIANSHIP CAUSE NO. 54 OF 2023  
(ARISING FROM FAMILY CAUSE NO. 151 OF 2020)**

**IN THE MATTER OF THE CHILDREN ACT CAP 59 (AS AMENDED)**

**IN THE MATTER OF CHILDREN LUBEGA JEROME HANNINGTON AGED 10 YEARS  
AND LUBEGA JOHANNA ELSIE AGED 12 YEARS**

**LUBEGA JOSEPH WASSWA ..... APPLICANT**

**VERSUS**

**JUDITH TUHAISE ..... RESPONDENT**

Before: **HON. LADY JUSTICE DR. CHRISTINE A. ECHOOKIT**

**RULING**

**BACKGROUND:**

The Petitioner petitioned for Legal Guardianship of 2 minors viz. Lubega Jerome Hanington and Lubega Johanna Elsie. The petitioner was brought under Sections 3, 43A and 43B of the Children Act and Section 98 of the Civil Procedure Act. The petition is supported by an affidavit sworn by the Petitioner.

**HEARING AND REPRESENTATION:**

The Petitioner was represented by M/s Shonubi Musoke & Co. Advocates while the Respondent was represented by Counsel Susan Nabatte. The Petitioner filed written submissions.

**ISSUES FOR THE DETERMINATION OF THIS COURT:**

1. Whether the Petitioner has furnished sufficient cause for grant of Legal guardianship to him.
2. Whether costs should be provided for.

**DETERMINATION OF THE ISSUE BY THIS COURT**

40 **Issue 1: Whether the Petitioner has furnished sufficient cause for grant of Legal guardianship to him.**

42 Section 3 and the 1<sup>st</sup> Schedule of the Children Act stipulates welfare and guiding principles for  
a child. These include the child's physical, emotional and educational needs. Section 4 of the  
44 Children Act sets out the rights of a child, which includes the right to express his or her views,  
belief or opinion on any matter that affects his or her wellbeing. Under section 5 of the Children  
46 Act, it is the duty of a parent, guardian or any person having custody of a child to maintain that  
child. This goes with parental responsibility under section 6 of that Act.

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Under Section 43A of the Children Act, an application for Legal guardianship can be made by  
50 a citizen of Uganda, which Lubega Joseph Wasswa is as shown in his petition. In MA. No. 004  
of 2017 at Arua High Court, Hon. Justice Stephen Mubiru stated in his ruling that a guardian is  
52 a person who is given power to make decisions for another person because he or she is  
considered not competent to decide for himself or herself. A guardian must always act in the  
54 best interest of the ward. The Petitioner cited the case of; In Re: Deborah Joyce Alitubeera &  
Richard Masaba (Civil Appeal No. 70 of 2011) [2012] UGCA 4 which also supported the best  
56 interest of the child as the primary consideration in all actions concerning children.

58 Lubega Joseph (as called Lubega Joseph Wasswa in the petition) is the biological father of the  
2 minors Lubega Jerome Hannington (11 years old) and Lubega Johannah Elsie (13 years old).  
60 The original birth certificates of the 2 minors were presented in court as was a NIRA Form 1 of  
notification of change/error in the information in the register, whose intent is to apply for change  
62 of father's name to add "Waswa". The Petitioner relied on the case of; In the Matter of an  
Application for Guardianship by Nakazindo Dorothy (Family and Children's Cause No. 1 of  
64 2022) [2022] UGHCFD 2, in support of the argument that a biological parent of a minor is a  
suitable person for the grant of guardianship, in the best interest of the minor.

66

In his petition, the Petitioner stated that he and the Respondent executed a divorce decree nisi.  
68 A divorce consent judgement was attached to Petitioner's affidavit in support of the petition and  
was endorsed by court on 14<sup>th</sup> of March 2023. The terms of the consent judgement included  
70 that the matrimonial property consisting of kibanja land with a house and boys' quarters  
(measuring approximately 180ft x 149ft and another land of approximately 100ft x 84ft, both  
72 situate at Bukasa A- Biira, Temangalo, Kiira Municipality, Wakiso District), be held by the  
Petitioner in trust for the benefit of the 2 minors until their transfer into their names when they  
74 reach majority age.

76 Court required production of the sale agreements for the said 2 kibanjas to show that they were  
indeed bought by the parties. An agreement of 11<sup>th</sup> September 2011 in respect of the land  
78 measuring 180ft x 149ft was presented; and the agreement of 2<sup>nd</sup> January 2014 in respect of  
the land measuring 100ft x 94ft were presented to court. The buyer in both agreements is stated  
80 as Lubega Joseph Wasswa the Petitioner.

82 The Petitioner relied on the authority of; In Re Adriko Reuben (a Minor) (Miscellaneous Civil  
Application No. 8 of 2016 [2016] UGHCFD 10, where it was held that when appointing a  
84 guardian, court ought to consider the capabilities and potential conflict of interest of the  
proposed guardian. He submitted that he is gainfully employed by La Cedri Bureau De Change.  
86 His employment identity card issued on 26<sup>th</sup> of February 2022 and expiring on 31<sup>st</sup> December  
2024, as well as his national identity card with NIN CM82100101QFH expiring on 27<sup>th</sup> of  
88 November 2024, were shown. Both identity cards bear the name Lubega Joseph Wasswa. The  
Petitioner's employment contract with La Cedri Bureau De Change dated 31<sup>st</sup> December 2023  
90 for the duration of another one year as a Volt Manager/General Duties, was also shown.

92 The Petitioner also stated that he is a law abiding citizen with no criminal record. He showed a  
clearance certificate dated 31<sup>st</sup> of May 2023 and a certificate of good conduct by the Uganda  
94 Police Force. There is also attached to the affidavit in support of the petition, a recommendation  
by the Welfare and Probation Officer of Wakiso District Local Government dated 2<sup>nd</sup> May 2023

96 recommending the Petitioner for grant of guardianship on the ground that he is the biological  
father of, and sole provider for, the 2 minors, and that he is a fit and proper person for the grant.

98

The Respondent who is also the mother of the 2 minors wrote a letter to court dated 24<sup>th</sup> of  
100 January 2024 stating her consent to guardianship by the Petitioner in the terms of the divorce  
consent judgement.

102

It is evident, therefore, that the Petitioner has the best interest of the 2 minors at heart as he  
104 applies for guardianship in respect of the 2 kibanjas, and that the welfare of the minors is being  
taken care of by the parents. This Court is possessed of inherent powers under section 98 of  
106 the Civil Procedure Act to make such orders as may be necessary for the ends of justice or to  
prevent abuse of the process of Court. Under section 33 of the Judicature Act, I am pleased to  
108 grant the application as it is in the best interest of the minor.

110 **Issue 2: Whether costs should be provided for**

Considering that this application concerns the welfare of the children of the 2 parties, and that  
112 there seems to be no contention between them, I will not make any order as to costs.

114 **CONCLUSION:**

In the premises, I hereby order that;

116 a) The Petitioner (Lubega Joseph Wasswa also known as Lubega Joseph in the children's  
birth certificates) be and is hereby granted legal guardianship over the 2 minors Lubega  
118 Jerome Hannington (11 years old) and Lubega Johannah Elsie (13 years old).

120 b) The matrimonial property consisting of kibanja land with a house and boys' quarters  
(measuring approximately 180ft x 149ft and another land of approximately 100ft x 84ft,  
122 both situate at Bukasa A- Biira, Temangalo Kira Municipality, Wakiso District), shall be

124 held by the Petitioner in trust for the benefit of the 2 minors until their transfer into the  
names of the 2 minors when they reach majority age.

126 c) There is no order as to costs.

128 I so order.

130 **Delivered** on this ..... 31<sup>st</sup> ..... day of ..... January ..... 2024.

2 .....  
Lady Justice Dr. Christine A. Echookit  
134 Judge.

136 The right of appeal explained.