

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
FAMILY CAUSE NO. 15 OF 2023
IN THE MATTER OF NSABIYUMVA DON CHARLEEN, (11 YEARS) AN
INFANT
AND
IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF
NSABIYUMVA DON CHARLEEN BY NSABIYUMVA BONIFACE

BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA

RULING

1. The Petitioner filed this ex-parte petition for guardianship of a minor aged 11 years old. The application was brought under the provisions of Article 139 (1) of the Constitution of the Republic of Uganda, 1995, sections 14, 33 and 39 of the Judicature Act, Cap. 13, section 98 of the Civil Procedure Act, Cap. 71, and sections 3, 4, 5 & 43 of the Children Act, Cap. 59 as amended. The grounds of the application are contained in the petition and amplified by the Petitioner's supporting affidavit dated 19th October, 2023. The grounds are as follows that:
 - (a) the Petitioner is aged 58 years, resident of Kiyunga, Mukono District, a holder of Refugee Card No: PNK00002517, and the biological father of Nsabirumva Don Charleen;
 - (b) the Petitioner is married to Mrs. Nizigiyimana Marie Goreth with whom they are blessed with five children including Nsabiyumva Don Charleen, a registered proprietor of the land comprised in Bulemezi

- Block 442, Plot 100 land at Nakatete, Luwero District measuring 2.8420 hectares;
- (c) the Petitioner's daughter Nsabiyumva Don Charleen is a Ugandan by birth and a minor aged 11 years, holder of National Identification Card NIN: CF1201210DFL9D;
- (d) in the year 2019, the Petitioner bought a piece of land comprised in Bulemezi Block 442, Plot 100 land Nakatete, Luwero District measuring 2.8420 hectares and registered it in his daughter's names Ms. Nsabiyumva Don Charleen as an insurance for unpredictable circumstances in relation to her welfare most especially education;
- (e) the Petitioner was working with Noah's Ark Children Ministry Uganda (NACMU) where he was earning money to pay for his daughter's school fees and looking after the entire family; however, in January 2023, the Petitioner's employment contract with the organization expired and he is now unemployed;
- (f) upon expiration of his contract, the Petitioner has been financially incapacitated to cater for his daughter's school fees and her basic needs including scholastic materials;
- (g) the Petitioner's daughter goes to St. Agnes Catholic Girls' Day and Boarding Primary School Naggalama, where he pays UGX 2,500,000/= (two million five hundred thousand Uganda shillings)



school fees per term and he still has an outstanding school fees balance of UGX 900,000/- (Uganda shillings nine hundred thousand shilling) for second term which closed in August 2023, and that the Petitioner has not yet cleared for third term 2023;

- (h) the Petitioner pleaded with the school administration to temporarily accommodate the minor as he looked for third term school fees including the outstanding balance for second term and all the attempts to get it has not been fruitful as he remains unemployed and with no hopes of securing any job soon;
- (i) having bought the land comprised in Bulemezi Block 442, Plot 100 and registered it in the names of his daughter as an informal insurance of her welfare most especially education, the Petitioner believes that it's only this land that can ably save the education of his daughter since it was the purpose for its purchase;
- (j) for the Petitioner to legally deal or transact on this land that is in the names of his daughter who is a minor, it requires him to obtain a legal guardianship order from this honourable court;
- (k) in the event that this application is not granted, chances of his daughter dropping out of school are very high since she is the only one among her siblings who has been depending on the Applicant for school fees and he is now unemployed; and
- (l) the Petitioner prays that this honourable court grants him a legal guardianship order, authorizing him to manage, develop, mortgage,



- sell, lease, rent out, create third party interests and carry out any other transactions on the land to enable him raise school fees and other basic necessities for his daughter.
2. At the hearing of this petition, the Petitioner was represented by Counsel Twongirwe Elvis from M/s Bagyenda & Co. Advocates who filed the Petitioner's written submissions on 17th April, 2024.
 3. The Petitioner's counsel reiterated the averments in the Petitioner's supporting affidavit, and added that the Petitioner has throughout his affidavit demonstrated that he is aware, capable, and overly willing to abide by the set duties of a guardian.
 4. The Petitioner's counsel submitted that courts in Uganda have over the time granted guardianship orders to biological parents of the children who demonstrate that their intentions in dealing in the land or property is not adverse to the interests of the children. Counsel prayed that the Petitioner is granted a guardianship order to enable him deal with the land comprised in Bulemezi Block 442, Plot 100 situate at Nakatete Luwero, registered in the names of his biological daughter Nsabiyumva Don Charleen. The application was accompanied by a report of the probation and social welfare officer dated 31st October, 2023.

Issue

Whether the Petitioner herein is eligible to apply for guardianship order under the provision of section 43 of the Children (Amendment) Act, 2016.



Court's consideration

5. Section 1(k) of the Children Act, Cap. 59, defines a guardian as a person having parental responsibility for a child. In other words, a guardian is a person who is given the legal power to make decisions for another person who is incompetent to decide for himself or herself due to incapacitation such as a person of minority age. Guardianship is thus a legal relationship between a competent adult (the guardian) and a child (minor) who is incapable of taking care of his or her own affairs.
6. Although a guardian assumes parental responsibility for the child, the guardianship order does not extinguish the natural parental rights and obligations over the child. The guardian makes decisions on behalf of the child and is by virtue of that status, authorized to make legal, financial, shelter, education, food and health care decisions for the child. For instance a guardian can make decisions regarding the investment and disposal of the property of the minor. While executing the mandate of administering the child's property, the guardian holds the property in trust for the child.
7. In consideration of whether or not to grant a guardianship order, the welfare principle must be adhered to. The court must be convinced that the Petitioner for guardianship intends to act in the best interests of the child. Section 3 (1) of the Children (Amendment) Act, No. 9 of 2016, provides that:



“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.”

8. Part V1A of the Children (Amendment) Act of 2016 (Act No. 9 of 2016) is on guardianship. Section 43A (2) of the Children (Amendment) Act, states thus:

“A person who is not a citizen of Uganda shall not be eligible to apply for legal guardianship”.

9. In the instant application, the petitioner is a Burundian. Although the Petitioner is the biological father of the child and has been in custody of the child and has been catering for her needs including feeding, shelter, education and medical care, he is not a citizen of Uganda. He is a refugee within Uganda as per paragraph 1 of his supporting affidavit to the petition and the Refugee Identity Card issued on 6th September, 2022 and expiring on 6th September, 2027.

10. The word “shall” used in section 43A (2) of the Children (Amendment) Act, 2016 is construed as mandatory. Consequently, based on the mandatory requirement cited above that only Ugandan citizens are eligible to apply for legal guardianship order, the Petitioner in the instant case does not qualify to be granted a guardianship order. As the biological father of the minor, the Petitioner in the instant case has the responsibility to care for his biological daughter with or without



the guardianship order. The recommendation of the probation and social welfare officer cannot salvage the situation where the petitioner has no locus standi before this honorable court.

11. Pursuant to the foregoing, this petition is hereby dismissed with no order as to costs. I so rule.

This ruling is delivered this 19th day of June 2024 by



FLORENCE NAKACHWA
JUDGE.

In the presence of:

- (1) Counsel Twongirwe Elvis from M/s Bagyenda & Co. Advocates, for the Applicant.*
- (2) Mr. Nsabiyumva Boniface, the Petitioner;*
- (3) Ms. Pauline Nakavuma, the Court Clerk.*