

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-FC-0003-2013**

**IN THE MATTER OF AN APPLICATION BY PATRICK BWAYO (THE  
NATURAL FATHER OF THE INFANT HEREINAFTER CALLED THE  
APPLICANT)**

**AND**

**IN THE MATTER OF GEORGE BEN BWAYO (HEREINAFTER CALLED  
THE MINOR)**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

This application was brought by Notice of Motion under O.52 r.1, and 3 of the Civil Procedure Rules and section 14 and 33 of the JDA, Section 99 CPA and sec.3 and 5 of the Children's Act.

The applicant sought orders from court that as natural father of the minor, he be appointed guardian to the infant **George Ben Bwayo**. He further sought orders that the applicant be allowed to deal with and or pledge/mortgage the property in the names of the said infant comprised in LRV 2680 Folio 1 Plot 53 Namatala Drive.

The Notice of Motion is supported by three affidavits of the applicant **Patrick Bwayo**, (father of the minor), **Jane Bwayo** (mother of the minor) and **Gilda Bwayo** (Daughter of applicant, and sister of the minor).

On 22<sup>nd</sup> October 2013, when the matter was for hearing, **Counsel John Mary Muwayo** for applicants informed court that the minor was unable to attend the hearing because he was attending school at Buddo S.S. in Senior two; and could not leave school to attend the hearing. He further informed court, that the applicant was before court seeking for orders that as a natural father of the minor, he be appointed guardian to the infant **George B. Bwayo** and also be allowed to deal with the property registered in the names of the above infant comprised in LRV 2680 Folio 1 Plot 53 Namatala Drive. He referred court to the contents of the affidavits sworn by applicant, **Patrick Bwayo** (Father), **Jane B. Bwayo** (mother and **Gilda Bwayo** (sister).

He informed court that the applicant **Mr. Bwayo** has been and is still the bread winner of the family business and hence wishes to deal with the land of the minor, by way of mortgage in order to finalize ongoing construction works on leasehold Vol. 2336 Folio 13 Plot 6 Bloc 'C' Butiru Mbale registered in the names of **Gilda Bwayo**. Applicant intends to utilize the proceeds of the mortgage for the welfare of the minor who is still at school together with other siblings who are also still at school. Details of the facts above are found in the attached affidavits of the applicant, his wife (**Jane Bwayo**) and daughter (**Gilda Bwayo**).

Counsel referred to sections 3 and 5 of the Children's Act, and informed court that the guiding principles in such matters is the welfare of the child. He informed court that the information contained in the affidavits, confirms that the minor is of school going age and needs to continue in school which can only be achieved if the applicant is appointed guardian and given authority to deal with the property by way of mortgage. He referred to section 5 of the Act, and prayed that in order to fulfill its requirements, applicant needs a guardianship order; and authority from court to mortgage the property. He cited the case of **Ofwono Natasha Emmy** (minor), in the matter of an application for guardianship of **Ofwono Natasha by Ofwono Jackline**. Family cause 199/2011 where court allowed applicant to mortgage the minors property as being in the minor's best interest to raise fees for education.

As prayed that for reasons stated by applicants, the court be pleased to grant the orders sought.

Court examined the three deponents, **Patrick Bwayo**, (father/applicant), **Jane Bwayo** (mother of minor/wife of applicant), **Gilda Bwayo** (Daughter of applicant/sister of minor). They all confirmed to court that the application had been discussed by the family and that it was aimed at furthering the welfare of the family and the minor in particular. They confirmed the contents of their respective affidavits.

In view of the above I make the following observations.

This application seeks for guardianship under sections 3 and 5 of the Children's Act, to enable the natural parents of the minor (infant) deal with the property of the infant.

Section 1 is on the duty to maintain a child, while section 3 is on the guiding principles.

Decided cases have laid down a number of guiding principles to courts to ensure that the child's welfare is protected.

In HC Misc. Cause No. 142 of 1993 in the matter of an application by **Gabriel Kangagwe** and **Kate M. Kangwagye** to be appointed joint guardians, **Lady Justice M. Kireju** as she then was held that:

*“paramount consideration is the interest and welfare of the infants. The court has to look at the particulars of each case and decide whether the infant stands to benefit from guardianship.”*

In the case before me, it is clear that the infant is the natural son of the applicant (**Patrick Bwayo**).

The infant is in school and is currently being supported in his education by the applicant (see paragraph 4, 5, 6, 7, 8 and 9 of **Patrick Bwayo**'s affidavit), also paragraph 4, 5, 6, and 8 of **Jane Bwayo**'s affidavit and paragraph 5, 6 and 7 of **Gilda Bwayo**'s affidavit.

The applicant has shown that as a parent he bought the property comprised in LRV 2680 Folio 1 plot 53 Namatala Drive and registered it in the names of his child **George Ben Bwayo** a minor. The applicant has further shown that in the interest of the welfare of his children, he registered another property LRV 2336 Folio 13 Plot 6 Block C. Butiru Township in the names of his daughter **Gilda Bwayo**.

Applicant has further shown that the family has been benefiting from the use of the above properties and that he intends to mortgage the properties in furtherance of the family welfare; in that he will carter for the education of the minor, and the welfare of the entire family.

In *HSC Misc. Cause No.13 of 1992. In the matter of Mirembe Ramona Zalwongo Kagwa, and Nakalema Kisakye Rowena Kaswa-infants*, which was an application for guardianship by a husband and wife the natural parents of two infant children; the parents sought an order of court to sell property registered in the joint names of the infant children.

**J. Okello** (as he then was) said:

*“The paramount consideration is based on whether the order applied for if granted will be for the benefit and welfare of the infant. Only where the order sought will be beneficial to the welfare of the infant will the court grant the application.”*

In the case before me, the father is the one who chose to register the property in the names of the infant so as to benefit it. The law protects the child from the

unscrupulous actions of parents and adults who may defraud them of their property in future. I have examined the parents (applicant) and his wife, and the sister of the minor and found that there is honesty and a honest desire to benefit the infant in this matter.

Following the principle and reasoning by **Hon. J. Mukiibi** in the case of **Ofwono Natasha** (Minor) and **Ofwono Jackline** (applicant) family cause No.199 of 2011, which is similar to the case before me, where the Judge found that;

*“the purpose of the loan is to further the education of the minor which is for her welfare and in her best interest.... The course is of great benefit to the minor and mortgaging the said property is ultimately in her interest.”*

I find, that the present applicant has shown that the purpose for the guardianship order and mortgage sought by applicant is in the best interest of the welfare of the minor **George Ben Bwayo**, as the proceeds from the commercial building shall be used for business and the long term benefits of the welfare, well being and education of the minor and their entire family.

This application is therefore allowed. The applicant **Patrick Bwayo** is hereby appointed the legal guardian of **George Ben Bwayo**, with power to pledge/mortgage the property in the names of the said infant comprised in LRV 2680 Folio 1 Plot 53 Namatala Drive.

I so order.

**Henry I. Kawesa**

**JUDGE**

**07.11.2013**