

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
FAMILY CAUSE 164 OF 2013

IN THE MATTER OF THE JUDICATURE CAP 13 AND IN THE MATTER OF THE CHILDREN ACT CAP 59

AND

IN THE MATTER OF AN APPLICATION BY LEE SIN DANNY KWET CHEONG HOW TO BE APPOINTED LEGAL GUARDIAN OF SENYONJO LOUIS (INFANT) OF KAMPALA DISTRICT

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This is an application for legal guardianship brought by notice of motion under Articles 34, 139 of the Constitution; sections 14, 33 and 39 of the Judicature Act, cap 13; section 98 of the Civil Procedure Act cap 71, section 3 of the Children Act; and Order 52 rules 1 & 3 of the Civil Procedure Rules. The applicant is seeking the following orders:-

1. This honourable Court be pleased to appoint Lee Sin Cheong Dany Kwet How to be the legal guardian of Senyonjo Louis.
2. Costs of this application be provided for.

The grounds of the application are that:-

1. Senyonjo Louis is a Ugandan infant born to Namale Recheal (mother) and Senyonjo Peter (father) but the parents do not stay together and they are not married.
2. Senyonjo Louis is an issue out of a brief relationship between the parents but has never seen his father.

3. The mother has never received any help from Senyonjo's father since he was born.
4. Senyonjo Louis and his mother Namale Recheal have been in the care of Lee Sin Cheong Dany Kwet How for over 3 years now.
5. The applicant Lee Sin Cheong Dany Kwet How has taken care of the infant Senyonjo Louis and his mother Namale Recheal and he wishes to continue doing so through a legal relationship between him and the infant.
6. The applicant is a citizen of the Republic of Mauritius by birth and works as a receiving and inspection assistant at the United Nations Support Base, Uganda.
7. The applicant has the ability to care for the infant's needs and those of his mother.
8. It is in the interest of the infant that this application is granted.

The application is supported by the affidavits of the applicant and of the infant's mother Namale Recheal.

The applicant, the infant's mother, and the child Senyonjo Louis were in court when the application came up for hearing.

The background is that Senyonjo Louis was born to Recheal Namale and Senyonjo Peter. Senyonjo's biological parents were never married. Senyonjo Louis has never seen his father. He was raised by his mother. He lives with his mother who cohabits with the applicant at Kibuli Muttajazi Makindye division in Kampala. The applicant seeks this court to grant him legal guardianship of the child.

In his written submissions, learned Counsel Kigozi Nasser for the applicant reiterated the facts and grounds of the application. He cited ***Deborah Joyce Alitubeera & Richard Masaba Civil Appeals No. 70 & 81/2011*** and numerous other cases to support the application. His submissions were briefly that this court has the jurisdiction to hear and determine the application, that the applicant satisfies the legal requirements of being granted an adoption order in respect of the child, and that it is for the welfare of the child that such order be granted.

Article 139(1) of the Constitution and section 14 of the Judicature Act, cap 13, give the High Court unlimited original jurisdiction in all matters. Section 98 of the Civil Procedure Act empowers the High Court to invoke its inherent powers to grant remedies where there are no specific provisions. In all matters concerning children, the best interests of the child shall be the primary consideration. This is a legal principle contained in Article 34 of the Constitution, the Children Act, and various international conventions ratified by Uganda concerning the rights of children.

In determining the child's welfare, the court is required under the first schedule of the Children Act to have regard to various factors. These are the ascertainable wishes and feelings of the child in light of his or her age and understanding; the child's physical, emotional and educational needs; the likely effects of any changes in the child's circumstances; the child's age, background and other circumstances relevant in the matter; any harm that the child has suffered or is at the risk of suffering; and, where relevant, the capacity of the child's parents, guardians or others involved in meeting his or her needs.

The evidence on record shows that the applicant has been living with the child and his mother Recheal Namale for about four years. During this period the applicant has cared for both the mother and her son. Annexature **D** to the applicant's affidavit shows that the child was placed under the foster care of the applicant on 15/06/2008. The applicant stated in his sworn affidavit that he loves the child like his own son and desires to have a legal relationship with him. Recheal Namale the child's mother testified on oath before this court, in addition to her sworn affidavit that the applicant has lived with them and taken care of them for over three years, and that he has been good, caring and loving to them. The report of the Probation and Social Welfare Officer, Entebbe Municipal Council, which is on the court record, confirms this.

It is evident that the applicant desires to have a legal relationship with the child Senyonjo Louis. He has been caring for the child and the mother of the child by providing for their basic needs. The three of them live as a family. Recheal Namale gave sworn evidence that she understands the implications of the applicant being

granted legal guardianship of her son Senyonjo Louis and that she is comfortable with it. It was her sworn testimony that she does not know where the biological father of the child is, and that she had not received any inducement to agree to the applicant being granted legal guardianship of her son. She intends to stay with her son together with the applicant.

The applicant is a citizen of Mauritius as shown by a photocopy of his passport annexed as **A** to his affidavit (original was seen by court). He resides and works in Uganda. He is employed as a Receiving and Inspection Assistant at the United Nations Support Base in Uganda. He co habits with the child's mother at Kibuli Muttajazi Makindye division in Kampala. The applicant has no criminal record, as revealed by a document signed for the Director of Public Prosecutions Mauritius, annexed to the applicant's affidavit as **B2**.

The infant was identified by his mother in court. Photocopies of his birth certificate (annexture **A** to his mother's affidavit) and Ugandan passport (annexture **C** to the applicant's affidavit) are on the court record. They were compared with the originals by this court and found to be the same.

The Children Act does not specifically provide for guardianship orders. However, the constitutional and other statutory provisions highlighted above empower this court to award guardianship orders.

Section 1 of the Children Act defines "guardian" to mean a person having parental responsibility for a child. A guardian must be a person who is ready to place himself/herself, in relation to the child, in *loco parentis* for purposes of its care and welfare. A guardian should have the child in his/her charge and actually look after it. A guardian should be able to exercise powers of control over the child. A guardian should ensure that the physical well being of the child is cared for, and that its legal rights are protected. A guardian should be a person who can reasonably be expected to take whatever action may be necessary or desirable on behalf of an infant. See ***Nabyama Moses alias Nabyama Abasa Family Cause No. 76/2011***.

In this case, I find that where the child's biological father cannot be traced and where the applicant has been living with the child together with the child's mother as a family, the applicant is the next best suited person to look after him. On basis of the adduced evidence, the applicant meets the requirements of legal guardianship. Denying him to look after the child would deprive the child of the available opportunity of being in a home where he is loved and parented by his biological mother and the applicant, since all the three already live as a family. This is a proper case where, through a guardianship order, the child will get a home, love, care and basic needs for his nurturing and development in life which the applicant is willing to avail. It will be in the child's best interests to allow this application.

I accordingly make the following orders on terms I consider fit for the welfare of the child:-

- a) **Lee Sin Cheong Dany Kwet How** is appointed legal guardian of Senyonjo Louis.
- b) The legal guardian shall submit once a year, photographs and a report on the state of health, progress and welfare of the child to the Registrar, Family Division of the High Court of Uganda at Kampala until he attains 18 (eighteen) years of age or until directed otherwise.
- c) The legal guardian shall immediately communicate any changes of addresses to the authority mentioned above.
- d) Costs of this application will be met by the applicant.

Dated at Kampala this 20th day of February 2014.

Percy Night Tuhaise

Judge.