

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
FAMILY CAUSE 236 OF 2013
IN THE MATTER OF MARVIN KAKOOZA (INFANT)
AND
IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP BY ROSEMARY KAZIBWE
BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This application for legal guardianship was brought by notice of motion *ex parte*, under article 34(1) & (2) of the Constitution; sections 14(1) & 33 of the Judicature Act, cap 13; section 98 of the Civil Procedure Act cap 71; sections 2,3, 5, & 6(1) of the Children Act; and Order 52 rules 1 & 3 of the Civil Procedure Rules. The applicant is seeking orders that:-

1. The applicant is the mother of the minor Marvin Kakooza and seeks to be appointed guardian to Marvin Kakooza the said infant.
2. The applicant be allowed to deal with or sell land comprised in Mutundwe Block 32 Plot 207 measuring approximately 0.09 hectares and undeveloped to which the infant is a joint tenant.
3. Costs of this application be provided for by the applicant.

The grounds of the application are that:-

1. The applicant is the mother of the minor named hereinabove.
2. The applicant is responsible for the maintenance of the said minor and is responsible for all the welfare requirements of the minor.
3. It would be in the interests of the minor that the applicant is granted guardianship of the infant and be allowed to deal with property comprised in Mutundwe Block 32 Plot 207 which is registered in the applicant's name and that of the minor.
4. The applicant desires to sell off part of the land so as to construct a residential house for the family and also pay school fees for the infant.
5. It is just and equitable and in the interests of justice and welfare of the children that this application be granted.

The application is supported by the affidavit of the applicant Rosemary Kazibwe

The applicant, the biological mother of Marvin Kakooza, is jointly registered with the said child as proprietors of land comprised in Mutundwe Block 32 Plot 207, measuring approximately 0.09 hectares. The child is under her care. She seeks this court to declare her legal guardian of the minor and to authorize her to sell the land so that she constructs a residential house and caters for the interests of the minor.

Learned Counsel Mugerwa Vincent submitted for the applicant that it is in the minor's best interests that the applicant be granted legal guardianship to enable her sell the land to acquire better shelter and education, to avail the child a better life.

The Children Act does not directly provide for guardianship orders. However, article 139(1) of the Constitution and section 14 of the Judicature Act 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.

The best interests of the child set out by the Children Act include 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 child's age, background and other circumstances relevant in the matter.

It is evident the applicant is the biological mother of the minor, as evidenced by the child's birth certificate, annexed to the applicant's affidavit as **A**. The child has always been under the applicant's care. The applicant and the child are joint proprietors of the land the applicant is desirous of selling. Their joint proprietorship of the land is evidenced by a copy of the certificate of title on the court record. The child himself stated to court on oath that the applicant is his biological mother and he is not opposed to her selling the land to build a residential house for the family and cater for his school fees.

In this case, where the applicant, who is child's biological mother, seeks an order that will enable her to sell the land she jointly owns with the child, and where the child, who is of understanding age, is not opposed to the sale, and where both state that it is for construction of the family's residence and paying the minor's school fees, such order should not be denied as it is for the welfare and best interests of the minor.

I accordingly make the following orders:-

1. The applicant is appointed legal guardian of her biological son Marvin Kakooza the minor.

2. The applicant is allowed to deal with or sell land comprised in Mutundwe Block 32 Plot 207 measuring approximately 0.09 hectares and undeveloped to which the infant is a joint tenant.
3. Costs of this application will be met by the applicant.

Dated at Kampala this 20th day of March 2014.

Percy Night Tuhaise

Judge.