

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**FAMILY DIVISION**  
**FAMILY CAUSE 217 OF 2013**

**IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF MBOWA FRED (MINOR AGED 12 YEARS), NAKAYI SHARON (MINOR AGED 13 YEARS), NAKYOMU BEATRICE (MINOR AGED 9 YEARS) AND NAKALEMA MARY (MINOR AGED 15 YEARS) BY NAKIZZA REBECCA (AUNTIE) AND NAKITENDE HARRIET (MOTHER)**

**AND**

**IN THE MATTER OF SECTIONS 3, 5, 6 AND THE 1<sup>ST</sup> SCHEDULE PARAGRAPHS 1(B) AND 2 OF THE CHILDREN ACT**

**AND**

**IN THE MATTER OF SECTION 33 OF THE JUDICATURE ACT, SECTION 98 CIVIL PROCEDURE ACT AND ORDER 52 RULE 1 CIVIL PROCEDURE RULES**

**BEFORE LADY JUSTICE PERCY NIGHT TUHAISE**

**RULING**

This application for legal guardianship was brought by notice of motion under sections 3, 5, 6 and the 1<sup>st</sup> schedule paragraphs 1(b) and 2 of the Children Act; section 33 of the Judicature Act; section 98 of the Civil Procedure Act; and Order 52 rule 1 of the Civil Procedure Rules. The applicants are seeking orders that they be appointed legal guardians of Mbowa Fred aged 12 years, Nakayi Sharon aged 13 years, Nakyomu Beatrice aged 9 years, and Nakalembe Mary aged 15 years, for purposes of transferring property comprised in Busiro Block 337 Plot 619.

The grounds of the application, as stated in the notice of motion, are that:-

1. The applicants are the biological aunt and mother of the minors respectively.
2. The 1<sup>st</sup> applicant Nakizza Rebecca is registered on land comprised in Busiro Block 337 plot 619 together with the minors and their late father.
3. The father of the minors Saulo Sekayi passed away and now they are under the sole care of the applicants and the applicants are desirous of transferring the land to raise money for the upbringing of the minors however the minors cannot execute conveyance documents.
4. It will be in the best interests of the minors and the applicants for this honourable court to grant this application.

The application is supported by the affidavits of the two applicants Nakitende Harriet and Nakizza Rebecca.

The applicants Nakitende Harriet and Nakizza Rebecca are the biological mother and aunt of the minors in the application. Nakizza Rebecca the minors' aunt jointly acquired land comprised in Busiro Block 337 Plot 619 together with the minors' late father Saulo Ssekayi. The land was subsequently registered in the names of Rebecca Nakizza, Saulo Ssekayi and his children, some of whom are the minors. The applicants seek this court to declare them legal guardians of the minors for purposes of transferring the land.

Learned Counsel Bbaale Musa submitted for the applicants that it is in the minors' best interests and welfare that the applicants be granted legal guardianship to enable the applicants deal with the land jointly owned with the minors, since the said minors cannot legally execute conveyance documents.

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 from the affidavit evidence and the minors' testimonies on oath before this court that the applicants are the biological mother and aunt of the minors. The land comprised in Busiro Block 337 plot 619 is registered in the name of the said minors, their aunt Nakizza R, and their late father Saulo Sekayi. This is evidenced by a copy of the certificate of title to the said land annexed as **C** to Harriet Nakitende's affidavit. The minors (Mbowwa Fred aged 12 years, Nakayi Sharon aged 13 years, Nakyomu Beatrice aged 9 years, and Nakalembe Mary aged 15 years) individually and separately stated to this court on oath that the applicants are their biological mother and aunt and that they are not opposed to their mothers and aunt dealing with the land to raise money for their upbringing. They made the statements on oath after this court had assessed each of them separately and found them to be of understanding age and to appreciate the nature of the oath.

There is also evidence, as per the affidavits and a copy of letters of administration annexed as **A** to Harriet Nakitende's affidavit, that the administrators of the late Saulo Sekayi are Nakizza Rebecca, Ntulume Robert and Sitenda Alex. The said administrators signed a consent, annexed as **B** to Harriet Nakitende's affidavit, empowering the applicants to apply for legal guardianship of the minors in the application.

In this case, where the applicants, who are the minors' biological mother and aunt, seek an order that will enable them to deal with the land their aunt jointly owns with the minor's late father and the minors; and where the minors, who are of understanding age, as well as the administrators of the estate of the late Saulo Ssekayi, are not opposed to the sale; and where it is stated on oath that it is for the said minors' upbringing, such order should not be denied as it is for the welfare and best interests of the minors.

I accordingly make the following orders:-

1. Nakitende Harriet and Nakizza Rebecca are appointed legal guardians of Mbowa Fred aged 12 years, Nakayi Sharon aged 13 years, Nakyomu Beatrice aged 9 years, and Nakalembe Mary aged 15 years, for purposes of transferring property comprised in Busiro Block 337 Plot 619.
2. Costs of this application will be met by the applicants.

**Dated at Kampala this 26<sup>th</sup> day of March 2014.**

**Percy Night Tuhaise**

**Judge.**