

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
FAMILY CAUSE 25 OF 2014
IN THE MATTER OF NAIGA HELLEN (CHILD)

AND

**IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP BY ATAI PAULINE
(MOTHER)**

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This application for legal guardianship was brought by notice of motion *ex parte*, under section 14 of the Children Act; section 33 of the Judicature Act, cap 13; and Order 52 rules 1, 2 & 3 of the Civil Procedure Rules. The applicant is seeking legal guardianship in respect of her child for purposes of dealing with the land they jointly own.

The application is supported by the affidavit of the applicant Atai Pauline which, among other things, states that:-

1. The applicant is the biological mother of the child.
2. The child is a minor and depends on the applicant for her welfare and education.
3. The child is of school going age and the applicant has failed to raise her school fees.
4. The applicant purchased land comprised in Kyadondo Block 185 Plot 1068 land at Namugongo and transferred it in those names.
5. The applicant wants to mortgage the land to raise money for the same.
6. The applicant wants to sell the land so as to raise money for the education of the child and upkeep.

The background is that the applicant, the biological mother of Naiga Hellen, is jointly registered with the said child as proprietors of land comprised in Kyadondo Block 185 Plot 1068 land at Namugongo. The child is under her care. She seeks this court to declare her legal guardian of the child to enable her mortgage the land for the welfare and education of the child.

Learned Counsel Mwangi Mohamed reiterated the affidavit evidence on record and prayed court to grant the guardianship order.

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 child. This is revealed by copies of hospital documents issued by Nsambya Hospital and the child health card issued by the Ministry of Health. They are all filed on the court record. The child has always been under the applicant's care. The applicant purchased the land in question, as revealed by a copy of the purchase agreement attached to her affidavit. The applicant and the child are joint proprietors of the land the applicant is desirous of mortgaging. Their joint proprietorship of the land is evidenced by a copy of the certificate of title attached to her affidavit. The child herself stated to court on oath that the applicant is her biological mother and she is not opposed to her selling the land to cater for her school fees. The application and the child's sworn testimony is that the applicant wants to sell the land but the applicant's affidavit states that she wants to mortgage it. This however does not go to the essence of the application and I have ignored it.

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

I accordingly order that the applicant be granted legal guardianship in respect of her child Naiga Hellen. Costs of this application will be met by the applicant.

Dated at Kampala this 1st day of April 2014.

Percy Night Tuhaise

Judge.