

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
FAMILY CAUSE 03 OF 2013
IN THE MATTER OF THE CHILDREN ACT CAP 59
AND
IN THE MATTER OF OTIM GABRIEL (MINOR)
AND
IN THE MATTER OF AN APPLICATION FOR GRANT OF AN ORDER FOR LEGAL
GUARDIANSHIP BY OTIM PHILIP (ELDER BROTHER)
BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This application for legal guardianship was brought by notice of motion *ex parte*, under section 98 of the Civil Procedure Act cap 71, section 33 of the Judicature Act, cap 13, section 3(1)(b) of the Children Act cap 59, and Order 52 rule 1 of the Civil Procedure Rules (CPR) and any other enabling provisions. The applicant is seeking orders that the applicant be appointed a guardian of Otim Gabriel a minor.

The grounds of the application are that:-

1. The applicant is the big brother of the minor who is under his care and custody.
2. The applicant requires the guardianship to enforce the rights of the minor and to act for and on his behalf in deserving matters for his welfare.
3. It is fair reasonable and in the interests of justice that this application be granted.

The application is supported by the two affidavits of the applicant **Otim Philip** and that of his other brother **Otim Moses**. This court also examined the child on oath after establishing that he was of understanding age. In addition, it requested for, and was availed, the original or certified copy of the duplicate certificate of title (annexture **A** to the applicant's affidavit) and the child's birth certificate before the delivery of the ruling.

The applicant states in his affidavit that he is the big brother of Otim Gabriel having been born of the same mother and father. He is desirous of being appointed guardian for the said child who is under his care and custody to enable him enforce the minor's rights and act on his behalf in deserving cases. The applicant and his brother Otim Moses acquired land jointly on Block 196

Plot 1217 situate at Komamboga. The land was registered in the names of the applicant, his bother Otim Moses, and the minor Otim Gabriel who is also their brother. They intend to do away with the land and use the proceeds to acquire bigger land which they will develop agriculturally and use the balance on tuition of the minor. It is also the applicant's evidence that he will not manage funding his brothers' education unless he is granted the order.

The other brother **Otim Moses** states in his affidavit that he is conversant with the facts as stated by the applicant in his affidavit; that he jointly acquired the land in question with the applicant; that the applicant is responsible for the day to day needs of the minor including shelter, nutrition, medical and general welfare; and that he has no objection to the applicant acquiring legal guardianship of the minor as it is in the minor's best interests.

Learned Counsel Baluku Ronald submitted for the applicant that it is in the minor's paramount interests that the court grants the order. He cited *Family Cause No. 124/2009 Application for Guardianship of Oja Martin Kenyi Peter* a copy of which judgment he availed court, to support his case.

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 Children Act sets out the best interests of the child to 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 an elder brother of the minor. The minor is aged 17 years (the application erroneously stated he is 14 years). His age is evidenced by his sworn oral testimony before court and his birth certificate which reveals he was born as Gabriel Latim on 8th February 1997. He has always been under the applicant's care. The applicant, the minor, and another brother (Otim Moses) are joint proprietors of the land the applicant is desirous of selling. This is evidenced by a copy of the duplicate certificate of title to the said land, annexure **A** to the applicant's affidavit which is on the court record. The minor himself stated to court on oath that the applicant is his brother who looks after him and he is not opposed to his selling the land to cater for his school fees.

In this case, where the applicant, who is child's brother, seeks an order that will enable him to sell the land he jointly owns with the child and another brother, and where the child, who is of understanding age, is not opposed to the sale, and where their other brother, also a joint proprietor of the same land, also states that it is for acquiring a bigger piece of land 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 a guardian of Otim Gabriel.
2. Costs of this application will be met by the applicant.

Dated at Kampala this 29th day of May 2014.

Percy Night Tuhaise

Judge.