

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
FAMILY CAUSE 213 OF 2014
IN THE MATTER OF MARK SIDUDA TREVOR

AND

**IN THE MATTER OF AN APPLICATION FOR A GUARDIANSHIP ORDER BY
NAMATA AGNES**

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This is an application for legal guardianship brought by notice of motion under the Children Act cap 59 and Order 52 rules 1 & 3 of the Civil Procedure Rules SI 71 -1. The applicant is seeking orders that she be appointed legal guardian of her child **Mark Siduda Trevor** to enable her sign transfer forms on his behalf for land comprised in Busiro Block 203 Plot 179, land at Nkowe.

The grounds of the application are that:-

1. The applicant is the mother and caretaker of the said child since he was born eight years back.
2. The child **Mark Siduda Trevor** has been in the custody of his said mother since birth.

3. The applicant intends to sell and transfer the said land which she has registered in both names of her son and herself.
4. It is in the interests of justice that the application is allowed.

The application is supported by the affidavit of the applicant. In addition to her supporting affidavit, the applicant attended court and was interviewed on oath. **Mark Siduda Trevor** the subject of the application also attended court. He was examined on oath by court after being found to be of understanding age.

The background is that the applicant who is the biological mother of the minor purchased the land in question and registered it in her names jointly with the minor's. She intends to sell and transfer the land but she needs a guardianship order to sign the transfer order on her son's behalf. Learned Counsel Nadamba Rhona submitted that the applicant has the best interests of the child at heart, and that she should accordingly be granted legal guardianship.

Article 139(1) of the Constitution, read with 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 and 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.

The adduced evidence shows that the applicant is the biological mother of the minor who is under her custody. She is not married to the father of the child and is the sole provider for his basic needs. The child himself stated to court on oath that the applicant was his biological mother and that he is not opposed to his mother disposing of the land to cater for his interests.

The applicant annexed photocopies of the minor's birth certificate as **C** to her supporting affidavit. It shows the minor is aged 9 years having been born on 14/04/2006. She also annexed the certificate of title to the land comprised in Busiro Block 203 Plot 179, land at Nkowe, as **B** to her supporting affidavit. It confirms her evidence that it is registered in their joint names. The original documents were later availed to court and they matched the annexed photocopies.

In this case, where the applicant, who is minor's biological mother, seeks an order that will enable her to dispose of the minors' land which she herself bought, and where the minor, who is of understanding age, is not opposed to the sale, stating that it is for his welfare, such order should be granted as it is for the welfare and best interests of the minor.

I accordingly make the following orders:-

1. The applicant **Namata Agnes** is appointed as the guardian of **Mark Siduda Trevor**.
2. The applicant is granted authority to sign transfer forms on the minor's behalf for land comprised in Busiro Block 203 Plot 179, land at Nkowe.
3. Costs of this application will be met by the applicant.

Dated at Kampala this 18th day of May 2015.

Percy Night Tuhaise

Judge.