

REPUBLIC OF UGANDA
HIGH COURT {FAMILY DIVISION}
KAMPALA
UGANDA
FAMILY CAUSE NO. 203 OF 2014

IN THE MATTER OF ROSETTE KANYUNYUZI ::::::::::::::::::::::::::::::::::(INFANT)

AND

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS THE LEGAL
GUARDIAN OF GAWLOWSKA- BUJOK MAGDALENA AND BUJOK TOMASZ
MACIEJ::(APPLICANTS)**

Before hon. Lady justice Catherine Bamugemereire

Ruling

This was an Application for Legal Guardianship brought pursuant to Art 139(1) of the Constitution of the Republic of Uganda (1995), Section 14 of the Judicature Act Cap 13, Sections 2,3,4,5 and 6 of the Children Act Cap 59 and Order 52 rr1, 3 of the Civil Procedure Rules Order

The Applicants sought for Orders that:

1. Gawlowska- Bujok Magdalena and Bujok Tomasz Maciej be appointed the Legal guardians of Rosette Kanyunyuzi

2. That Gawlowska- Bujok Magdalena and Bujok Tomasz Maciej be permitted to immigrate the child to Poland in order to fulfil their parental obligations.
3. Costs of this Application be provided for

The grounds for this Application were fully set out in the Statutory Declaration of the Applicants and the Affidavits of Margaret Tugume Assimwe, the biological mother of the child, Paul Assimwe, the biological Father of the child, Shakira Kunihira maternal aunt to the child and Joseline Olimi Mbabazi the Senior Probation and Social welfare Officer of Kyenjojo District.

In brief the grounds for this application were that

1. The Applicants learnt about Rosette Kanyunyuzi, in 2013 during a Christian mission in UG when they visited Misandika Primary School in Kyenjojo District.
2. The said Rosette Kanyunyuzi, 11 years, was born on 28th May 2003.
3. The main Applicant Magdalena Gawlowska Bujok learnt about the child in 2013 during a Christian mission in UG when they visited Misandika Primary School.
4. They found her to be a smart child in class but who was in a substandard school and appeared to be needy herself.
5. The two Applicants visited the home of the child and found that it Paul Assimwe and Margaret Assimwe had nine children to look after and therefore could not afford to give Rosette Kanyunyuzi the level of care required for a child of her brilliance.
6. The Applicants immediately offered to place the child in a more competitive school. The child was placed in Tooro Boarding School.
7. That this Application for Legal Guardianship is made in the best interest if the Child.

Two issues were raised in this case:

- 1. Whether the Application is made for the welfare and the benefit of the child?**
- 2. Whether the Applicants are suitable guardians for the child**

Whenever a Court is faced with a decision regarding what is good for a child Section 3 of the Children Act requires the Court and pretty much any other government or nongovernmental institution or parent to make the best interest of the child its most important consideration.

The criteria which assists a person to make a best interest decision is set out under the *First Schedule* to the Children Act. It is paramount that in questions relating to the upbringing of a child, the total well being of the child is considered.

In this case now before me, an order for legal guardianship invariably means that this child will be removed from her parents and granted to the Applicants who will then be charged with the responsibility to bring up this child. This is an eleven year old girl from Kyenjojo District from an area the Applicants have said appears to be underprivileged. This in my view is an onerous responsibility which I am not convinced that the parents have not very clearly thought through. It is possible that they are not aware what a serious change this will mean for their child's lifestyle. The child would have to adapt to extreme weather conditions, a language other than English or Lutoro and the sheer absence of similarly placed children in her environment.

I further noted that the Applicants picked on this particular child due to her brilliance in class. Unfortunately there are no supporting documents from her school to prove this exceptional character in the child. Additionally, the Social Welfare Report filed by the Senior Probation Officer of Kyenjojo District did very little to throw light on the plight of the child. Indeed the amount of time and space given to the child's background is testament to the fact that the Senior

Probation and Social Welfare was more concerned about the Applicants than she was about the child. Only scanty information was available regarding the living conditions of the parents or indeed of the child. No parentage was fully explained by the SPSWO. It was unclear whether these parents have relatives and an extended family or not. The SPSWO did not visit the school, Tooro Girls Boarding School in Kabarole District to verify if indeed the child attended this school. She did not produce report cards from any other school. The Social welfare report provided was therefore inadequate and unreliable. This Court shall disregard the Social Welfare report altogether.

This Court is cognisant of the criteria for determination in making a best interest decision. Under the First Schedule to the Children Act Cap 59 the criteria is laid down as follows:

3. Criteria for decisions.

In determining any question relating to circumstances set out ... the court or any other person shall have regard in particular

- (a) the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding;
- (b) the child's physical, emotional and educational needs;
- (c) the likely effects of any changes in the child's circumstances;
- (d) the child's age, sex, background and any other circumstances relevant in the matter;
- (e) any harm that the child has suffered or is at the risk of suffering;

(f) where relevant, the capacity of the child's parents, guardians or others involved in the care of the child in meeting his or her needs.

(a) The ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding

While this particular child appeared old enough to speak for herself she did not seem possessed of sufficient information or exposure to know the full extent of the likely implications a decision for legal guardianship would have on her well being.

(b) The child's physical, emotional and educational needs;

It is my finding that it would be in the best interest of the child that she is exposed to as minimal disruption as possible in order for her to benefit from her current situation. She has been placed in a fairly good All Girls School, away from a supposedly poor or needy home. That in my view is the best possible environment she could get to optimise her potential. She will be given opportunity to get a good education and yet will not be torn away from the bonds of her large family set up.

(c) The likely effects of any changes in the child's circumstances;

It is my finding that as little disruption as possible must be allowed in order to allow this child to grow up closer to the environment she is accustomed to. Whisking Rosette

Kanyunyuzi off to Poland would be in my view an extreme decision. It is not advisable and is unsafe.

(d) The child's age, sex, background and any other circumstances relevant in the matter;

This Court is concerned that an abrupt change in environment, feeding, company and circumstances of a girl child who is very close to puberty would affect this child adversely. She is at a delicate age. It would be best if she was brought up in the stability of the environment she is used to. It is also most likely that she would suffer psychological trauma which may become more complicated given her age. Poverty alone is not a good reason for unsuspecting parents to give away their children.

This Court did find that the parents do not appear knowledgeable about the likely effects of their decision to give away their child. This Court is the ultimate guardian of children. I was not comfortable that these parents had the capacity to understand the enormity of the decision they were making. Being the ultimate guardian it is the duty of this Court to protect even parents from making decisions that may turn out to be injurious to their child.

In view of my findings which prove that the Social Welfare Report was not adequate, that the child was best left in her current environment and that the parents did not have the capacity to make such a life changing decision, I find that the application for legal guardianship is not made in the best interest of the child. Having so found, there is no meaning in assessing the capability of the applicants since the result will be the same.

In making this decision this Court is fully alive to the fact that we often allow guardianship orders mostly to allow Applicants to migrate the children to Western Europe. This Court notes that there is some proof that The United States of America, the United Kingdom, Canada, the Scandinavian Countries are not only open societies, they are also sworn adherents to the Hague Convention as Members. Their societies are also known to have developed systems, processes and procedures for protection minorities. There is however little comfort found in the little information about child welfare in Poland. I am aware that Poland only recently joined the EU as a member and Krakow has recently become

Consequently, the Application for Legal Guardianship is denied with costs.

Catherine Bamugemereire

Judge