

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
FAMILY CAUSE 155 OF 2015
IN THE MATTER OF ELIJAH AMUMPAIRE AMOOTI AND ELISHEBA NSIIMIRE
AKIIKI INFANTS) AGED EIGHT AND SEVEN YEARS RESPECTIVELY
AND
IN THE MATTER OF AN APPLICATION TO BE APPOINTED LEGAL GUARDIANS OF
THE SAID INFANTS BY MARY KAGORO AND JACKSON MUGARRA
BEFORE LADY JUSTICE PERCY NIGHT TUHAISE
RULING

This is an application for legal guardianship brought by notice of motion under sections 5 and 6(21) of the Children Act cap 59, section 9 of the Civil Procedure Act cap 71 and Order 52 of the Civil Procedure Rules SI 71 -1. The applicant, who initially filed the application alone, but later amended it to include Jackson Mugarra as the second applicant, is seeking court to appoint the two as legal guardians of Elijah Amumpaire Amooti and Elisheba Nsiimire Akiiki, aged eight and seven years respectively.

The application is based on grounds that the applicants are the biological parents of the two infants responsible for the said infants' welfare, education, shelter and clothing; that the 1st applicant bought land known as plot 58 & 57 on Block 185, land at Namugongo, Kiira Town Council and registered it in the infants' names; that the applicants are desirous of obtaining a loan from Centenary Bank to ensure the infants' welfare is maintained; that the said infants can only sign documents through a guardian; and that the infants shall not obtain the loan if the guardianship order is not granted.

The application is supported by the affidavit of the Mary Kagoro the 1st applicant. In addition to the supporting affidavit, the two applicants attended court and were interviewed on oath. Elijah Amumpaire Amooti and Elisheba Nsiimire Akiiki, the subjects of the application, also attended court. They were examined on oath by court after being found to be of understanding age.

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, 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 applicants are the biological parents of the two infants who are students of Sir Apollo Kaggwa Primary School, Nakasero Branch. The two infants reside with the applicants at their home in Rubaga. In 2007 the 1st applicant purchased land known as plot 58 & 57 on Block 185 at Namugongo, Kiira Town Council in the names of the two infants. The applicants want to obtain a loan from Centenary Bank using the certificate of title as security to cater for the two infants' welfare by constructing a house on the land to generate income for the two infants. The two infants separately stated to court on oath that the applicants are their biological parents and they are not opposed to their disposing of the land to cater for their interests.

The 1st applicant annexed photocopies of the two infants' birth certificates to her supporting affidavit as **B**. She also annexed the certificate of title to land comprised in plot 58 & 57 on Block 185 at Namugongo, Kiira Town Council as **C** to her supporting affidavit. The original documents were later availed to court and

they matched the annexed photocopies. Annexure **B** shows that the two infants are the applicants' biological children. It also shows that Elijah Amumpaire Amooti is aged eight years and ten months, having been born on 25/04/2007; and Elisheba Nsiimire Akiiki is aged seven years and seven months, having been born on 08/07/08. Annexure **C** confirms that the land is registered in the names of the two infants.

In this case, where the applicants, who are the infants' biological parents, seek a guardianship order in respect of their biological children to enable them obtain a loan and use the infants' certificate of title as security so that they construct a house on the land to generate income for the two infants, such order should be granted as it is for the welfare and best interests of the said infants.

I accordingly make the following orders:-

1. The applicants, Mary Kagoro and Jackson Mugarra, are appointed legal guardians of the two infants Amumpaire Amooti and Elisheba Nsiimire Akiiki.
2. Costs of this application will be met by the applicants.

Dated at Kampala this 23rd day of February 2016.

Percy Night Tuhaise

Judge.