

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FAMILY DIVISION

FAMILY CAUSE 191 OF 2014

ARISING OUT OF FAMILY CAUSE NO 137 OF 2010

**IN THE MATTER OF AN APPLICATION FOR AUTHORIZATION TO DISPOSE OF
LAND KNOWN AS KYADONDO BLOCK 211 PLOT 1007 BY ZAM KALULE
NAKIYINGI (MOTHER)**

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This is an application for legal guardianship brought by notice of motion under Article 139(1) of the Constitution of the Republic of Uganda; sections 14, 33, & 39 of the Judicature Act cap 13; section 98 of the Civil Procedure Act cap 71; and Order 52 rules 1, 2 & 3 of the Civil Procedure Rules SI 71 -1. The applicant is seeking to be authorized to dispose of land known as Kyadondo Block 211 Plot 1007 at Kikaya currently in the names of Enock Sebunya, a minor.

The application is based on grounds that the applicant is the biological mother of Enock Sebunya a minor, having begotten him with the late Samuel Kalule who died on 19/08/ 2003; and that it is in the interests of the child that the application be granted. 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. Enock Sebunya 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 (Zam Nakiyingi Kalule) who is the biological mother of Enock Sebunya (the minor), was appointed a legal guardian of the minor by this court in Family Cause No. 137/2010. She brought this application to enable her sell land comprised in Kyadondo Block 211 Plot 1007 land at Kikaya registered in the names of the minor to meet the minor's needs.

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 applicant is the biological mother of the minor and also his legal guardian. She begot the child with Samuel Kalule who passed away on 19/08/2003. The applicant and the late Sam Kalule had bought the land in question and registered it in the names of the minor. The applicant is a single mother finding it difficult to meet the minor's education and maintenance. The mother of the child wants to sell the land to raise money to meet the minor's school requirements, maintenance and continued sustenance. 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 late Samuel Kalule's death certificate and the minor's birth certificate to her supporting affidavit as **A** and **B** respectively. She also annexed the certificate of title to the land comprised Kyadondo Block 211 Plot 1007 at Kikaya as **E** to her supporting affidavit. The original documents were later availed to court and they matched the annexed photocopies. Annexure **B** shows the minor is aged about fifteen years, having been born on 05/11/2000, while annexure **A** shows that Samuel Kalule the minor's father died. Annexur **E** confirms that the land is registered in the names of the minor.

In this case, where the applicant, who is minor's biological mother and legal guardian seeks an order that will enable her to dispose of the minors' land, 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. In any case the applicant is the minor's legal guardian and she has powers to make decisions on behalf of the minor.

I accordingly make the following orders:-

1. The applicant is authorized to dispose of land known as Kyadondo Block 211 Plot 1007 at Kikaya currently in the names of Enock Sebunya a minor.
2. Costs of this application will be met by the applicant.

Dated at Kampala this 03rd day of February 2016.

Percy Night Tuhaise

Judge.