

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

FAMILY CAUSE NO. 043 OF 2017

IN THE MATTER OF THE CHILDREN ACT

AND

THE CHILDREN (AMMENDMENT) ACT 2016

AND

IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP OF
ABEY DINAH, ABU MARTIN AND AMINA REGINA (MINORS)
OF SCHOOL VILLAGE, WALUKUBA MASESE DIVISION,
JINJA MUNICIPAL COUNCIL, JINJA DISTRICT

BEFORE HON. JUSTICE MICHAEL ELUBU

RULING

This is an application filed by KHAMIS ARTEMA, for the legal guardianship of AMINA REGINA (16), ABEY DINAH (15) and ABU MARTIN (12). It is brought under S. 43 B (a), (b), (c) and (d) of **The** Children Act Cap 59 (as amended).

The background is that KHAMIS ARTEMA, is married to LONAH PATRICK, a sister of OCHAN PATRICK, who is the deceased biological father of the 3 children that the Petitioner seeks a guardianship Order for. The petitioner has, together with one NADIA FLORENCE, had joint custody of children. NADIA is an aunt (also a sister of the children's deceased father) who states in an affidavit that she does not have the means to continue looking after them.

All three children are in school and were interviewed by this Court in the course of these proceedings.

I find the issues for determination are:

- i) Whether this court can grant the order.
- ii) Whether the applicant can be granted the order
- iii) What remedies are available

i) **Whether this court can grant the order.**

Under S. 43 B of **The Children Act** an application for guardianship shall be made to this High Court.

This court can therefore competently entertain this application.

ii) **Whether the applicant can be granted the order**

The conditions for the grant of an order of guardianship are prescribed by S.43 of **The Children Act** (as amended). Therefore the grounds on which this application is based shall be assessed against the conditions laid out in the law.

Here the applicant is 35 years of age and within the age bracket that can competently make an application of this nature. His wife LORNA KHAMIS is an aunt of the Children. Her sister, NADIA FLORENCE, has had physical custody of the children assisted by the applicant. NADIA now states that she is unable to cater for all their needs which leaves them exposed.

All the children are above 12 years of age. They are at a stage where they can properly and intelligently speak for themselves. On interview by this court all stated that they were in favour of this application being granted.

I have also considered the petitioners background information. He lives both in Uganda and the United States of America. He is a Ugandan citizen who does not have a criminal record, either in Uganda or the USA.

As is required, a Social Welfare Officer, from the Jinja Probation office has made an assessment of the petitioner and recommended him for grant of a Guardianship Order over the 3 Children. I have studied the report and taken its recommendations into account.

Aside from Nadia Florence, a paternal aunt, there is also consent from Todwong David a maternal uncle indicating he has no objection to this application. I am satisfied from an inquiry made by this Court at the hearing that none of the parties here have received any payment or other reward in exchange for the orders sought here.

This Court has also taken into account that whenever a court determines any matter regarding the upbringing of a child, it shall consider the best interest or welfare of the child, as the primary consideration.

I have considered the circumstances here: the fact that the children and the petitioner are from the same extended family; that their aunt NADIA can longer provide them with sustenance; the economic means of the petitioner; the wishes of the children who state they are in favour of a grant of this application; and the applicant's willingness to provide the children with a loving family, care and affection.

From all the foregoing, I find that the applicant meets the conditions for a grant of the order applied for. I find farther that it would be in the best interest of the children to grant the said Guardianship Order.

It is therefore ordered as follows:

- i) A Guardianship Order is granted to KHAMIS ARTEMA for:
 - a) AMINA REGINA
 - b) ABEY DINAH
 - c) ABU MARTIN
- ii) The applicant shall within 14 days of delivery of this ruling register this Order with the Uganda Registration Services

Bureau and The National Identification and Registration Authority.

This Order vests all parental authority and responsibility of the children in the petitioner.

iii
iv)

The Order shall remain in force, in respect of each child, until that child attains the age of 18 years.

MICHEAL ELUBU, JUDGE.

15/5/2018