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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO
FAMILY AND CHILDREN’S CAUSE NO.32 OF 2018
IN THE MATTER OF AN APPLICATION FOR A GUARDIANSHIP ORDER BY
KITENDA JOHN (FATHER) FOR THE TRANSFER AND REGISTRATION OF LAND
COMPRISED IN KYAGWE BLOCK 116 PLOT 3210 AND 1961
AND
IN THE MATTER OF LUKE THOMAS KYESWA (MINOR UNTIL 2030), JANE
IMELDA ZOE BATWAWULA (MINOR UNTIL 2027) AND SEBADUKA THEODORE
WALCOT
(MINOR UNTIL 2014)

BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH COURT
RULING

This Ruling is in respect of an Application for legal Guardianship brought by way of Notice of Motion (exparte) under section 39 of the Judicature Act, Section 98 of the CPA and sections 3, 4, 5 and 6 of the Children Act CAP 59, order 52 rules 1 and 3 of the CPR seeking orders that;

- i) A Guardianship Order be granted to the Applicant KITENDA JOHN to enable the transfer and registration of Kyagwe Block 166 Plot 1961 land at Nsube from LUKE THOMAS KYESWA (MINOR UNTIL 2030) to his sister JANE IMELDA ZOE BATWAWULA (a minor until 2027) and Kyagwe Block 166 Plot 3210 land at Nsube from SEBADUKA THEODORE WALCOT (minor till 2024) to his brother LUKE THOMAS KYESWA (MINOR UNTIL 2030).
- ii) Such Orders as the Court may deem fit to grant.

This Application is supported by the Affidavit of the Applicant JOHN KITENDA.

The brief background of the case is that the applicant JOHN KITENDA is the biological father of all the four minors who are the subject matter of this Application.

29 The children's father (Applicant) lawfully purchased land comprised in KYAGWE BLOCK 166
30 PLOTS 1961 and 3210 and registered it in the names of two children LUKE THOMAS
31 KYESWA vide Instrument number MKO-00008500 dated 16th July 2014 and SEBADUKA
32 THEODORE WALCOT vide Instrument number MKO-00004631 dated 21st January 2014 land
33 at Nsube.

34 He further purchased KYAGWE BLOCK 106 PLOT 722 and registered it in the names
35 SEBADUKA THEODORE WALCOT vide MKO-00006961 on 5/05/2014 (All the certificates
36 of title for the said land are attached to the affidavit in support of the application clearly
37 indicating the said children as the registered proprietors of the land). Also attached are the birth
38 certificates and school bank slips from Seeta Junior School belonging to all the minors.

39 He now seeks an order of this court to enable him evenly share the said properties amongst all
40 three of his children as the share meant for JANE IMELDA ZOE BATWAWULA (a minor until
41 2027) was erroneously transferred by the land office to LUKE THOMAS KYESWA who
42 already has his share in the same estate. And that it is this error that he seeks to rectify with the
43 order and authorization of this court.

44 The children's biological mother NAJJUKO THEREZA was present at the hearing and
45 confirmed to this court that she does not object to this application and in fact she also wanted the
46 guardianship order to be granted to her husband as this would enable him to equally share the
47 properties amongst their three children.

48 Counsel MALIK BUYONDO who represented the Applicant filed written submissions on Court
49 record pointing out several grounds to support the grant of this Application. The same have been
50 duly analyzed and referred to while writing this Ruling.

51 **ISSUE**

52 Whereas Counsel for the Applicant raised two issues for determination, the only issue for this
53 Court's consideration in this kind of Application is;

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55 ***Whether it is in the best interest of LUKE THOMAS KYESWA (minor until 2030), JANE***
56 ***IMELDA ZOE BATWAWULA (a minor until 2027) and SEBADUKA THEODORE***

57 **WALCOT (minor till 2024) (the minors) to appoint JOHN KITENDA as their Guardian to**
58 **enable him hold and manage the property on their behalf.**

59 **RESOLUTION**

60 I have carefully perused Counsel’s written submission on record alongside the Applicant’s
61 Affidavit evidence and all the accompanying documents and resolve as below;

62 **IN RE: AN APPLICATION FOR GUARDIANSHIP BY WANDERA PETER FAMILY**
63 **CAUSE NO.004 OF 2017** Justice Stephen Mubiru defined a Guardian and described his or her
64 role in the following words:

65 **“A person who is given the legal power to make decisions for another person because**
66 **he/she is considered not competent to decide for him or herself. Guardianship is thus**
67 **the legal relationship between a competent adult (Guardian) and a person who because**
68 **of incapacity such as minority is incapable of taking care of his/her own affairs (the**
69 **ward). The Guardian makes decisions on behalf of the ward. The Guardian by virtue**
70 **of that status is authorized to make legal, financial, shelter, education, food and health**
71 **care decisions for the ward but maybe required to seek Court’s approval for various**
72 **decisions especially those regarding the investment and disposal of the property of the**
73 **ward. A Guardian must always act in the best interest of the ward. In such cases, the**
74 **Guardian will manage the ward’s finances and property and provide records to the**
75 **Court.”**

76 This relationship if created in essence puts the Guardian in a fiduciary relationship with the
77 minor with fiduciary duties. **This calls for the management of the property by the Guardian on**
78 **behalf of the minor with the best interest of the minor.**

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81 In determining the suitability of an Applicant to be appointed as Guardian for a child, the court is
82 guided by the **Welfare Principle** as stipulated in **sections 3 and 4 of the Children Act**. In that
83 regard therefore; a Guardian has to have these four main duties in mind;

84 1. To act only in the best interest of the minors in this case **LUKE THOMAS KYESWA,**
85 **SEBADUKA THEODORE WALCOT and JANE IMELDA ZOE BATWAWULA.**

86 2. To manage the property and any activities thereon with utmost care.

87 3. To keep the money and property of the minors separate from his own.

88 4. To keep good records pertaining to the properties as he is accountable to the Court because he
89 becomes an agent of Court with regards to the children's properties.

90 As a fiduciary, one must be trustworthy, honest and always act in good faith and in the best
91 interest of the minor (s) and once the Application is granted, the Applicant must report to Court
92 regularly and be ready to answer any questions pertaining to the Guardianship.

93 Even those dealing with the guardian in respect of the property must know and be mindful of the
94 fact that he is executing the contract (s) if any on behalf of the minors and for the minors' best
95 interest.

96 This Court had the opportunity to examine and assess the Applicant when he appeared for the
97 hearing. He is the biological father of the minors and together with his wife, they purchased
98 properties and chose to register them in the names of their minor children with further plans of
99 developing the same with rentals in a bid to secure the future welfare of these minors.

100 In paragraphs 4 to 7 and 11 of his affidavit in support of the Application, he clearly details the
101 need for this order as the only way to rectify an honest mistake on his part in a bid to execute
102 cross transfers for the minor's properties which steps had been started without a Guardianship
103 order and thus could not be completed.

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106 The children's mother one NAJJUKO THEREZA also attended Court on the date of hearing
107 and emphasized that she had no objection to this Application. She further told court that as
108 parents who have the best interests of their children as their priority, this Guardianship order
109 if granted to her husband was only going to serve the best interests of their minor children.
110 She was in total support of the Application.

111 This Court perceived the same to mean that at all material times, the children’s mother is
112 going to be present to oversee all the dealings on the various properties and to ensure that the
113 same is protected and only utilized to the best interest of the minors.

114 Court has no doubt that these children will be the direct beneficiaries to these developments
115 as their parents willingly purchased the properties and voluntarily elected to register them in
116 their names as registered proprietors and the same parents have even gone further to pursue
117 an equal distribution of the properties amongst the said minors to curb any possibility of
118 future conflict. This can only be done by a selfless loving parent who has his children’s best
119 interests at heart.

120 Court is therefore satisfied that the Applicant’s desire to transfer and register the two
121 properties in the names of the minors is definitely in the best interest of these minors. This is
122 in line with the welfare principle where the best interest of the child is paramount.

123 The Applicant has exhibited high level of responsibility towards all his children by buying
124 and registering property in their names. The intention is not to alienate property belonging to
125 the minors but to correct an error in land office.

126 This Court is satisfied with the grounds for the Application.

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131 In the result, the Application is granted with the following Orders;

- 132 1. A Guardianship order is granted to **JOHN KITENDA** in respect of **LUKE THOMAS**
133 **KYESWA, SEBADUKA THEODORE WALCOT and JANE IMELDA ZOE**
134 **BATWAWULA.**
- 135 2. JOHN KITENDA is authorized to secure the transfer and registration of **Kyagwe Block**
136 **166 Plot 1961 land at Nsube from LUKE THOMAS KYESWA (MINOR UNTIL 2030)**
137 **to his sister JANE IMELDA ZOE BATWAWULA (a minor until 2027) and Kyagwe**

138 ***Block 166 Plot 3210 land at Nsube from SEBADUKA THEODORE WALCOT (minor***
139 ***till 2024) to his brother LUKE THOMAS KYESWA (MINOR UNTIL 2030).***

140 3. JOHN KITENDA is to file the relevant copies of the executed transfers and other
141 relevant documents with the Registrar of this court within 3 months of this execution.

142 4. This Guardianship Order is limited to the transfers in this Application and shall lapse
143 upon execution of the said transfers or the minors herein attaining maturity age
144 whichever is earlier.

145 I so order.

146 **Dated this 17^h day of August 2019.**

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150 Hon. Lady Justice Margaret Mutonyi

151 **RESIDENT JUDGE**

152 **MUKONO HIGH COURT.**

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