

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)
FAMILY CAUSE NO. 22 OF 2018**

**IN THE MATTER OF SSEKITOLEKO IBRAHIM, KABUKA IMRAN AND
KAFEERO SHARIF (MINORS)**

AND

**IN THE MATTER OF AN APPLICATION TO BE APPOINTED AS THE
GUARDIAN OF SSEKITOLEKO IBRAHIM (FOURTEEN YEARS OLD),
KABUKA IMRAN (NINE YEARS OLD) AND KAFEERO SHARIF (SEVEN
YEARS OLD) BY SOPHIA NABWIRE**

BEFORE: HON. LADY JUSTICE KETRAH KITARIISIBWA KATUNGUKA

RULING

Introduction

[1] This is an application by Sophia Nabwire for an Order for guardianship brought under Articles 139 (1) and 34 (1) and (2) of the Constitution, Sections 2 and 3 of the Children Act Cap 59, S.14 and 33 of the Judicature Act Cap 13, S.98 of the Civil Procedure Act Cap. 71, and Order 52 rules 1 and 3 of the Civil Procedure Rules SI 71 – 1, to deal with the property of Ssekitoleko Ibrahim, Kabuka Imran and Kafeero Sharif, ‘Minors’, situated in Mbuya II Parish Zone 1 Nakawa Division, Kampala District.

[2] The grounds for this application are set out in the affidavit of the Applicant, Sophia Nabwire, and are briefly that; the minors are half orphans, their biological father having passed away in November 2012; the applicant is the biological mother of the minors, currently taking care of their welfare; the father of the minors died intestate and his estate devolved unto his widow, the applicant herein, and the children, three of whom are the aforesaid minors; the land that is the subject of this application is now owned by the applicant, jointly with the minors and their two adult siblings; that due to prevailing circumstances it has become necessary to dispose of the property and acquire new property for the

minors in a different location; that since the minors have no capacity to contract, it is necessary that the application be granted to allow the applicant transact on their behalf.

5 The Applicant is represented by Counsel Lou Javis from Kabayiza, Kavuma, Mugerwa & Ali Advocates.

Supporting documents

10 [3] Attached to the application are the National ID of the applicant, death certificate of the father to the children (Ssekitoleko Ibrahim), Letters of Administration granted to the applicant, an inventory of the estate of the late Ssekitoleko Ibrahim, supplementary affidavit of the LC 1 Vice Chairperson for Mbuya II Parish Zone 1; copies of the Birth certificates of the children; photos of the property; the land sale agreement between George Katabarwa and Sulaiman Kiggundu (the buyer and alleged father to the deceased Ssekitoleko Ibrahim)
15 dated 22/08/1981 and a property rates demand note from KCCA.

Counsel for the applicant made submissions which I have carefully considered together with the pleadings and the relevant law.

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The facts of the case appear to be;

[4] That the applicant is the biological mother of the children and caters for all their needs; that the father of the children died intestate and his property including the suit land devolved onto his widow, the applicant, and his children; that the applicant obtained Letters of Administration and subsequently transferred the suit
25 land into hers and the children's names; that in the interest of the children the applicant has decided to sell the suit property so as to get money to buy a more profitable piece of land for the children which will not be interfered with by paternal relatives who are allegedly laying claim on the suit property.

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The issues for resolution are;

1. Whether this court has jurisdiction to entertain this matter.
2. Whether it is in the best interests of the children that the applicant be granted a guardianship order.

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THE LAW

Jurisdiction.

[5] Article 139(1) of the Constitution provides;

10 *‘The High Court shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law’.*

Section 14 (1) of the Judicature Act provides;

15 *‘The High Court shall, subject to the Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or this Act or any other law’.*

Section 33 of the Judicature Act provides;

20 *‘The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal*
25 *proceedings concerning any of those matters avoided’.*

Section 98 of the Civil Procedure Act cap. 71, provides;

30 *‘Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of this court’.*

O. 52(1) of the Civil Procedure Rules provides;

‘All applications to the court, except where otherwise expressly provided for under these Rules, shall be by motion and shall be heard in open court’.

5 This court therefore has jurisdiction to entertain this application.

The position of the law;

[6] The position of the law is that when considering issues to deal with children, their welfare is paramount, pursuant to Article 34 of the Constitution of the Republic of Uganda, Section 3(1) of the Children Act, Article 3(1) of the United Nations Convention on the Rights of the child (which Uganda ratified in 1990); Article 10 4(1) of the African Charter on the Rights and the Welfare of the Child (which Uganda ratified in 1992). This position has been fortified by courts who have held that in all matters concerning children, the best interests of the child shall be 15 the primary consideration, (see the case of Mark Siduda Trevor (an infant) Family Cause No. 213 of 2014 and the case of Deborah Joyce Alitubeera Civil Appeal No. 70 of 2011.

According to Bromley's Family Law, 8th Edition, at page 336,

20 *“...the children’s welfare is the court’s sole concern, and other factors are relevant only to the extent that they can assist the court in ascertaining the best solution for the child....”*

[7] Article 26 (1) of the Constitution of Uganda provides;

25 ***‘Every person has a right to own property either individually or in association with others’.***

Section 11(1)(a) of the Contracts Act, 2010) provides;

***‘A person has capacity to contract where that person is—
(a)eighteen years.....’***

[8] **Section 1 (k)** of the Children Act defines a guardian, as a person having parental responsibility for a child; it is also the duty of a guardian or any person having custody of the child to maintain that child;

Section 43H (1) of the Children (Amendment) Act, 2016 provides“...all persons appointed as guardians have parental responsibility for the child ...”

Section 1(o) of the Children Act, Cap.59 states that “Parental responsibility means all rights, duties, powers, responsibility and authority which by law a parent of a child has in relation to the child.”

RESOLUTION OF THE CASE.

[9] Having considered the law now the issue for determination is whether it is in the best interests of the children that this application be granted.

In the instant case the applicant is, according to the availed birth certificates, the mother to the children, and as such she has the constitutional duty to raise and cater for them. Mr Ssekitoleko Ibrahim, the deceased is also indicated as the father of the minors and the applicant is the administrator of his estate as shown in the Letters of Administration vide AC 280 of 2013. The children appeared in court .The eldest child, Ssekitoleko Ibrahim aged 14 years, informed court that the applicant is his mother and that the suit land is subject to wrangles from family members and so they would like to sell it and buy some other property. A supplementary affidavit of the vice Chairperson LC 1 states that the applicant and her five biological children own the suit property as bequeathed by the late Ssekitoleko Ibrahim and that the applicant and her family have faced continued hostility from some of her late husband’s relatives who are claiming entitlement to the property as family property.

[10] Court directed counsel to avail additional information to show that the property is part of the estate of the children’s father. A land sale agreement was presented as proof of the acquisition of the suit land by the children’s father from his own

father and which property the deceased later on passed to his children. The sale agreement dated 22nd May 1981 is between a one George Katabarwa (the seller) and Sulaiman Kiggundu (the buyer). Counsel relied on a property rates demand note issued by KCCA to the eldest child, Ssekitoleko Ibrahim as further proof that the property was bequeathed to the children.

[11] The applicant and the minors, according to the applicant's affidavit in support also supported by the affidavit sworn by Mukasa Joseph the Vice chairperson LC 1Mbuya 11 Parish Zone 1 Nakawa division, are in physical possession of the property. S. 6 (1) of the Local Government (Rating) Act, 2005 provides that the person liable for the payment of the rate shall be the owner of the property in respect of which the assessment is made. (See also the case of **Ocean Estates Ltd v Pinder [1969] 2 AC 19** where it was held that possession is prima facie evidence of ownership). I have no reason to believe that the minors are not in possession of the suit property.

The applicant is the biological mother of the minors who all live on the suit property. The minors all appeared well groomed and had been picked from school to appear in court. Their best interests are exhibited in the applicant who upon obtaining Letters of Administration registered the property jointly in the names of the children and accordingly filed an inventory in court vide AC 280/2013 showing how the property was distributed among the beneficiaries (children) to the deceased.

[12] At paragraph 10 of the Affidavit in support, the applicant states that the property is part of unregistered land jointly owned by other adults and the interests of the minors are at risk of being unfairly alienated; so selling it and buying another property and have it registered would be in the best interests of the minors.

In my view a biological parent is the best person to provide care for the child and ensure that the child's rights, including property rights, are protected and

preserved until he/she is of age. In most instances the child has come to own property because the parent has gifted or bequeathed it so where a child has property it should in the most ideal situations be protected by the biological parent until the child is of majority age. In the absence of a biological parent, the adoptive parent or guardian is expected to take care of all the child's interests. While most decisions are made on behalf of a child by either a parent or guardian, for example decisions to seek medical assistance, decisions on accommodation, among others, being a biological parent on its own does not automatically entitle a parent to deal in the property of his or her minor child because ownership rights are exclusively person to holder (see Article 26 cited above). To harness the rights of a child to own property and to benefit there from without jeopardising his or her welfare, courts have granted Guardianship orders to biological parents and other people who have demonstrated that their intention is for the welfare of the children who own property, like in this case (See the case of **Alya Mayanja (HCMC No. 20 of 2003; In Re Mark Siduda (an infant) Family Cause No. 213 of 2014 and In the matter of an Application for guardianship by Wandera Peter ; Family and Children's Cause No. 04 of 2017)**).

[13] The consideration is that the applicant should not have interests that are adverse to those of the minor, the subject of the application, and the minor's physical, emotional and educational needs would be sufficiently met by granting the order. (see In the matter of Nabatanzi Jovia and In The Matter Of An Application For Guardianship by Ronald Kamusiime, Mc. No. 48 Of 2016).

Conclusion

[14] I find that the applicant does not display any adverse interests against the minors subject of this application. The children's current circumstances if allowed to continue as they are, with threats from relatives, could lead to loss of their property; their circumstances therefore cannot be changed in the negative for as long as the land proposed to be bought from the proceeds of sale of the suit land is of a higher value for the better benefit of the minors.

I am therefore granting the application and I hereby make the following orders;

1. Ms Sophia Nabwire is hereby appointed legal guardian of Ssekitoleko Ibrahim,
Kabuka Imran and Kafeero Sharif;
2. Ms Sophia Nabwire is allowed to deal with the children's land situated in
Mbuya II Parish Zone 1 Nakawa Division, Kampala District;
3. Ms Sophia Nabwire shall source the services of a registered valuer prior to the
sale of the children's land situated in Mbuya II Parish Zone 1 Nakawa
Division, Kampala District and establish the current value of that property to
ensure that the land to be purchased is of a higher value than the suit land;
4. Ms Sophia Nabwire shall ensure that the interests of the minors are always
reflected in the property documents, any land and anything bought with the
proceeds of the sale of the suit property and shall ensure that the minors
property reverts to them when they reach the age of majority.
5. That the applicant shall bear the costs of this application.

Dated at Kampala this 12th Day of September 2019.

KETRAH KITARIISIBWA KATUNGUKA

JUDGE