

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT JINJA
FAMILY CAUSE NO. 012 OF 2019**

**IN THE MATTER OF KIGENYI UMAR AND SHABRA NABWIRE
(CHILDREN)**

AND

**IN THE MATTER OF AN APPLICATION FOR APPOINTMENT AS
LEGAL/GUARDIAN OF KIGENYI UMAR AND SHABRA NABWIRE (AGED 9 & 6
YEARS RESPECTIVELY, BY MUSA JOMO**

RULING

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

This is my ruling.

The applicant Mr. Musa Jomo has presented this application by motion under Article 139 of the Constitution, the Children Act and the Civil Procedure Rules.

He seeks to be appointed the legal guardian of Kigenyi Umar and Shabra Nabwire (hereinafter the children), both his biological minor children.

The purpose of the appointment is for him to be authorized to sell part of land comprised in **FRV JJA360 Folio 23** also known as **Plot No.4758** land at Kyamagwa.

The land is currently registered in the names of the applicant, another called Sharif Kigenyi, Umar Kigenyi and Nabwire Shabra; the latter being minors.

The brief grounds are that the applicant is the biological father of the two children who are minors until 2025 and 2028 respectively.

That he obtained the land in 2017 and put it in the names above mentioned.

That he has been providing for the children, meeting all their basic needs and he wants to continue doing so and in addition, to educate them.

He wishes to sell the land for the sole benefit and well being of the minor children, for which he must obtain a guardianship order.

He states that it will be in the best interest of the children if his application is allowed and that it will be for their welfare and benefit. Also that the mother of the children has consented to him being appointed a legal guardian.

The applicant presented a certificate of marriage between him and Nalubanga Nulu and Nalubanga Nulu herself was in court today and answered some questions.

The application is supported by the affidavit of the applicant in which he expanded on the above grounds;

This applicant stated in his affidavit that he is 51 years of age, a business man married to Nalubanga Nulu Norah and the biological father of the above children.

He mentions the fact that he bought the land and put it in the names of the minor children with others. But that now he is currently incapacitated financially to continue supporting these children and for that reason, he needs a guardianship order. He explained that the education and other basic needs of these children will be better catered for if the order is given and he attests to the truth of what is stated in the affidavit.

Short birth certificates of the two children were presented, Nabwire Shabra was born on 10/5/2017 and Kigenyi Omar was born on 21/1/2010 to the applicant and Nalubanga Norah.

I did mention to counsel for the applicant that the court would have preferred the formal birth certificates or final birth certificates from NIRA. However, since this application is not being contested, I will accept the short birth certificates which were issued by the Sub-County Chief of Mafubira Sub-County.

I am satisfied that these are the two children of the applicant and they are part owners of the suit land.

The law relating to disposing of children's property would be Section 3 of the Children Amendment Act and my consideration will lie solely on the Welfare Principle which is paramount. In summary, I must consider the welfare and best interest of these children as I make

a decision on whether the applicant should be allowed to sell this land or to administer it in any other manner.

The applicant was in court and he stated that he only wishes to sell not all, but part of the land only. The land measures one acre in size. The applicant has already rented part of it to the Bridge Academy School and he wants to sell off only 30 feet by 70 feet to a neighbour, one Annet Musawo.

He has indicated that the proceeds will be to cater for the needs of the minor children.

Ms. Nalubanga also appeared before me. She confirmed that she is the biological mother of the children. That part of that land is the matrimonial home. she confirmed that she did not contribute towards its purchase, but the fact that her matrimonial home is found on the land, it was important that views are sought and I did seek them. She is aware of the intentions of the applicant and has no objection.

I have considered the application and the affidavit. I have interviewed the applicant and his wife, Naluganga. This is a sizeable piece of land of 1 acre. The intention is to sell only part in order to cater for the needs of the minor children. I believe what is left of the land can be kept in trust for them.

The applicant has explained that he once owned a restaurant business as well as being a peasant farmer. That the restaurant business folded, so he has been financially incapacitated.

I am persuaded that this is an application for which a guardianship order will be in the best interests of these children, and I allow it for the reasons above.

The applicant Musa Jomo is appointed the legal guardian of Kigenyi Omar and Shabra Nabwire and he is thereby authorized to sell part of the land comprised in **FRV JJA360 Folio 23** also known as **Plot No. 4758** at Kyamagwa.

That the proceeds of the sale should be used to cater for the welfare of these two minor children.

The applicant will meet the cost of the application.

I so Order.

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Eva K. Luswata

Judge

16/04/2019