

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
FC GUARDIANSHIP APPLICATION NO. 001 OF 2020
IN THE MATTER OF TUMUSIIME NATHAN BOTH (An infant)

AND

**IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY KWIZERA
BESI**

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. NATHONY OJOK, JUDGE

Ruling

The petitioner brought this application for legal guardianship of a boy Tumusiime Nathan Both, aged 8 years old and the petitioner is his biological father. The petition is brought under **Sections 3, 4, 5, 43(a), 439(b), 44(f) and 44(g)** of the Children's Act as amended.

15 The Petitioner is a Ugandan citizen, a farmer by occupation and a resident of Kawungezi/Rwakibira, Madu Sub-County, Kigezi Parish, Gomba District. He is married to Mutesi Scovia, the mother to Tumusiime Nathan Both.

20 That the petitioner and Tumusiime Nathan Both are joint proprietors of land comprised in FRV 1779, Folio 22, Block 380, Plot 35 at Kawungezi as well as LRV 1853, Folio 1, Block 380, Plot 34 at Kawungezi measuring 72.966 hectares and 2.5100 hectares respectively. The properties are used as pastoral grounds and residence. Certificates of title were obtained.

That the petitioner desires to sell Plot 34 and carry out income generating activities on Plot 35 for the sustenance of the family.

25 The petitioner also seeks court to determine the joint tenancy between the petitioner and Tumusiime Nathan Both on Plot 35 by partition and subdivision of the suit land to allot 20 acres thereof to Tumusiime Nathan Both and the balance of 160.296 acres to Kwizera Besi as a sole owner of the said parts of the land, all of which cannot be done because one of the registered proprietors is a minor. Thus,
30 the instant application.

Representation:

M/s Nsereko – Mukalazi & Co. Advocates represented the petitioner.

Resolution:

5 Whether it is in the best interest of the Child that the Petitioner be granted a guardianship order?

The guiding principle in cases involving children is that welfare of the child should at all times be paramount and the interests of the petitioner in such cases should not be adverse to that of the child as per **Section 3** of the Children's Act..

10 The petitioner in the instant case under paragraph 6 stated that he is the biological father of the infant and provided proof of a birth certificate to that effect. That he is the one that has been taking care of the child together with his wife Mutesi Scovia who gave her consent for the instant application. The petitioner also stated that he has not been given any consideration in relation to the instant application and the infant is not subject to any guardianship order. That the petitioner is best
15 suited to take care of the child.

The Petitioner seeks from this court an order to sale land comprised in FRV HQT 1853 Folio 1 Block 380 Plot 34 land at Kawungenzi to carry on income generating developments on another piece of land comprised in FRV HQT 1779 Folio 22 Block 380 Plot 35. The Petitioner as seeks an order that the land comprised in FRV HQT
20 1779 Folio 22 Block 380 Plot 35 is partitioned/subdivided to allot 20 acres to the child and 160.2 acres to the Petitioner.

Courts in Uganda have overtime granted guardianship orders to biological parents of the children who demonstrate that their intentions in dealing with land/property belonging to a child are for the best interest/for the welfare of the
25 child involved. (See: **Re Trevor Mugumu(Child) Family Cause 68/2019**).

In the instant petition, the Petitioner who is the parent of the child does not state how his 8 year old son became a co-owner in the properties in this petition. The titles attached to the petition do not indicate as it should whether the proprietors i.e the Petitioner and his son are joint tenants or tenants in common.

30 **Section 56** of the Registration of Titles Act provides that where two or more persons are registered as joint proprietors to land, they shall be deemed to be entitled to the land as joint tenants. The four unities of possession, interest, title and time must all

exist. At common law there is a presumption that a joint tenancy is created each time there is more than one owner of land, however this presumption is rebutted in two circumstances i.e lack of one or more of the four unities, or by use of words of severance such as “between” or “equally” this would sever the unities and convert the joint tenancy into a tenancy in common.

Contribution towards the purchase price is key for a joint interest in a joint tenancy to be established. (See: **Hellen Oyeru v. Namuli Matovu SCCA NO. 007/2008**).

In the instant petition one of the joint tenants is a child of 8 years who by no means contributed to the purchase price if at all the property was purchased by the biological parent. As noted earlier the petitioner does not state how he and his son became joint tenants on the titles presented to court. The interest of the child having most likely been without monetary contribution, the presumption is that this is a tenancy in common rather than a joint tenancy where ownership is not 100% to either of the owners and on that basis the land in question can be severed.

There is no doubt that the biological parents of a child are the best suited persons to provide care of the child and ensure that his property rights are protected until he becomes of age. However the petition before me leaves some doubt as to how the land in question was acquired by the petitioner and under what circumstances the child was included on title as a proprietor. This I find important in the sense that a parent who buys land and includes his child as an owner has the best of interest for their child, this however may not be the case where the land was acquired as a bequest to both the child and his parent.

Counsel for the petitioner submitted that the petitioner had satisfied all the requirements under the Children’s Act for a grant of the guardianship order.

It is my finding that the Petitioner does not display adverse interests as against the child who is the subject of this petition. The reason behind the desired sale of land comprised in FRV HQT 1853 Folio 1 Block 380 Plot 34 land at Kawungenzi is to carry on income generating developments on land comprised in FRV HQT 1779 Folio 22 Block 380 Plot 35 also jointly owned by the petitioner and his son.

While the biological parent of the child (the Petitioner) seeks an order from this court to subdivide the remaining land to allot 20 acres to the child and 160.2 acres to himself with the consent of the child’s mother, I can only be moved to allow such a proposition if the petitioner had proved that he purchased the suit land and in the best interest of his son added him as a proprietor.

The Petition is therefore granted and I make the following orders that;

1. The Petitioner Kwizera Besi is appointed as the legal guardian of Tumisiime Nathan Both.

2. Kwizera Besi is allowed to sale land comprised in FRV HQT 1853 Folio 1 Block 380 Plot 34 land at Kawungenzi for the sole purpose of putting up income generating activities and to cater for the needs of the child.

3. FRV HQT 1779 Folio 22 Block 380 Plot 35 is subdivided and 50 acres are allotted to Tumusiime Nathan Both while the remaining 130.2 acres are allotted to Kwizera Besi.

4. Out of the proceeds of the sale of land comprised in FRV HQT 1853 Folio 1 Block 380 Plot 34, Kwizera Besi should immediately process a certificate of title to the 50 acres in the name of Tumusiime Nathan Both.

5. Costs of this petition to be met by the Petitioner.

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OYUKO. ANTHONY OJOK

JUDGE

10/06/2021