

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

FAMILY AND CHILDREN CAUSE NO. 05 OF 2021

IN THE MATTER OF AN APPLICATION OF GUARDIANSHIP BY NAMUSOKE
5 MILLY (THE BIOLOGICAL MOTHER OF KITIBWA MERCY AND KWAGALA
ESTHER (MINORS))

AND

IN THE MATTER OF KITIBWA MERCY AND KWAGALA ESTHER

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

Ruling

10 This is an application brought under **Sections 3, 4, 5** and **6** of the Children Act,
Section 98 of the Civil Procedure Act and **Order 52 Rules 1** and **3** of the Civil
Procedure Rules seeking the following orders;

- 15 1. A guardianship order of the children, Kitibwa Mercy (17 years) and
Kwagala Esther (16 years) be issued to the applicant with all necessary
directions.
2. An order be granted authorizing all dealings on land/title Block 88 Plot
441, Mpigi Mawokota, Subdivision, sale, lease, title transfer and any other
as the same may be required by the applicant.
- 20 3. Such orders as the court may deem fit to grant.

The application is supported by an affidavit sworn by Namusoke Emily and the
grounds briefly are as follows;

1. That sometime in September 2017, the applicant acquired land comprised
in Mawokota Mpigi Block 88 Plot 441.
- 25 2. That the applicant decided to have the land registered in her name and her
children Kitibwa Mercy (17 years) and Kwagala Esther (16 years).
3. That registration was effected on 22/09/2017 and a duplicate certificate
of title was issued to her.
- 30 4. That the applicant is desirous of dealing with the above mentioned
property and using the proceeds for the wellbeing of her children in which
case the grant of a guardianship order is a prerequisite.

Issue:

1. Whether it is in the best interest of the children that the applicant be granted a guardianship order?

Representation:

- 5 M/s Xander Advocates represented the applicant and filed written submissions.

Resolution of issue:

Whether it is in the best interest of the children that the applicant be granted a guardianship order?

- 10 Counsel for the applicant cited **Article 34** of the Constitution of the Republic of Uganda, 1995 and **Section 3** of the Children Act as the law considered while dealing with issues concerning children and their welfare being paramount in such matters.

- 15 Counsel emphasized the welfare and best interests of the children as being paramount and relied on **Bromely's Family Law, 8th Edition, at page 336**, where it was stated that;

"...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..."

- 20 Counsel noted that according to the birth certificates attached to the application the applicant is the biological mother of the children and as such has the constitutional duty to raise and cater for them. Counsel relied on the case of **In the matter of Trevor Mugumu (child), Family cause No. 68/2019**, where court held that;

- 25 *"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 to 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."*

- 30 Counsel for the applicant added that to harness the rights of a child to own property and to benefit it without jeopardizing their 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 as per the case of **In the matter of an application for guardianship by Ronald Kamusiime, Miscellaneous Application No. 48 of 2016.**

- 5 Further, that the applicant's interests must not be adverse to those of the minor, and that the minor's physical, emotional and educational needs should be sufficiently taken over once the order is granted. **(See: Section 1 of the 1st schedule under Section 3 of the Children Act and Section 3(a) of the same Act).**

- 10 Counsel implored court to look at the capabilities of the applicant, potential conflicts of the proposed guardian and that in the circumstances the applicant is the biological parent of the minors and meets the capability test and she does not have any adverse interests to those of the minors.

- 15 I have carefully considered the submissions for the applicant, the law cited and authorities relied on. I entirely agree with the submissions for the applicant that in dealing with issues concerning children, it is paramount to consider their welfare and best interests. That the applicant interest should not be adverse to those of the minors and all the minors' needs ought to be fully taken care of.

- 20 In the instant case the applicant is the biological mother of the minors as proved by the birth certificates attached to the application who bought the suit property and had it registered in both her name and that the minors. The applicant is now desirous of dealing with the property for the benefit and wellbeing of the minors and such proceeds as represents the minors' interest in the property. The duplicate certificate was also attached to the application and indeed the property is registered in the applicant's name and those of the minors.

- 25 I find and hold that the applicant as the biological parent of the minors and is the one that has been taking care of them is a suitable person to whom this order should be granted for the best interest of the said minors. This issue is therefore resolved in the affirmative.

This application is hereby allowed with the following orders;

- 30 1. A guardianship order of the children, Kitibwa Mercy (17 years) and Kwagala Esther (16 years) is issued to the applicant with all necessary directions.

2. An order is granted authorizing all dealings on land/title Block 88 Plot 441, Mpigi Mawokota, Subdivision, sale, lease, title transfer and any other as the same may be required by the applicant.
3. Applicant bears her own costs.

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OYUKO ANTHONY OJOK

JUDGE

26/11/2021

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