

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)
IN THE MATTER OF THE CHILDREN ACT, CAP. 59
FAMILY CAUSE GUARDIANSHIP APPLICATION NO. 89 OF 2022
IN THE MATTER OF ACAA GIFTY JOSEPHINE BAKHITA (A
MINOR AGED 8 YEARS)

AND

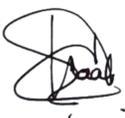
IN THE MATTER OF AN APPLICATION FOR LEGAL
GUARDIANSHIP BY MS SYLVIA ROSE ADONG OTENG

RULING BEFORE: HON. LADY JUSTICE CELIA NAGAWA

1.0 Introduction.

1.1 This ruling relates to a Petition for Guardianship that was filed in this Court by Sylvia Rose Adong Oteng (**the Petitioner**) under **Sections 3, 4, 5, 43B and 43A of the Children's Act Cap 59 as amended 2016**. The orders sought are that;

1. An order for Guardianship of the child **ACAA GIFTY JOSEPHINE BAKHITA** by the Petitioner be made under the Children Act with all the necessary directions.
2. The costs of this Petition be provided for as above mentioned or otherwise as the court may direct, and
3. Such further or other Order be made as the nature of the case may be.



1.2 The grounds of the petition are set out in the Petition and explicated in the affidavit of the Petitioner filed at this Honorable Court on 8th October, 2022 but briefly they are that;

- a) The Petitioner is a female adult citizen, residing at Plot 2040 Sentamu Road, Luzira, Zone 5 Nakawa Division, Kampala District and Ngetta Lira District or at Casale Monferrato, Alessandria, Italy
- b) The petitioner is aged 70 years old and unmarried and she is not related to the child.
- c) The child is aged 8 years old, her father is unknown and her mother is deceased.
- d) The child is currently in the custody of the Petitioner at Sentamu Road, Luzira Zone 5 and she has been her primary care giver since 2021.
- e) The Petitioner has looked after several non-biological children over the years including Ayugi Gloria aged 25 years, Kiya Daphine aged 15 years, Akot Olivia 17 years and Akello Cinderella aged 18 years.
- f) The Petitioner sometimes lives in Italy and wants to obtain the Guardianship Order to enable her travel to Italy with the Child.
- g) The Petitioner undertakes to take care of the child Acaa Gifty Josephine Bahkita. She undertakes to look after her health and understands that the Probation and Social Welfare Officer has the right to remove the child from her home in certain circumstances.



2.0 Representation and Hearing.

2.1 The Petition was filed by Learned Counsel Rita Aceng Ogwang of M/S OARS & BT Advocates, Kampala and she represented the Petitioner during hearing of this Cause.

Issues for determination:

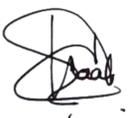
2.2 The issues for determination by this Court are;

- i. Whether this High Court is seized with Jurisdiction to entertain this Petition?**
- ii. Whether the Petitioner qualifies to be granted a Guardianship Order in respect of the child ACAA GIFTY JOSEPHINE BAKHITA?**
- iii. Whether the application is in the best interest of the child?**

3.0 Background of the Child.

3.1 The Child Acaa Gifty Josephine Bakhita was born on 28th April, 2014. She was born to Lalam Grace and to an unknown father. The biological mother of the child passed on due to an unknown illness and she left behind six children that include Morris Bongomin and the child Acaa Gifty Josephine Bakhita. Upon the death of her mother, the child was referred to Jude's Children's home orphanage in Gulu. The orphanage called the brother Bongomin Morris to take the child away as she had reached the maximum age and the home could not continue to care for her.

3.2 The child's brother could not care for her financially and was connected to the applicant through a friend. He requested the



applicant to help him take care of his sister because he was struggling and did not have a source of income.

4.0 Background of the Petitioner.

- 4.1 The Petitioner was born on 22nd November, 1953 in Lira District, Uganda. She is a retired Foreign Service Officer from the Embassy of Italy in Kampala. The Petitioner spent most of her life between Italy and Uganda.
- 4.2 The Petitioner provides support to a number of children enabling them acquire an education including Ayugi Gloria aged 25 years, Kiya Daphine aged 15 years, Akot Olivia 17 years and Akello Cinderella aged 18 years. The Petitioner also has an adopted child named Oyella Rosemary Ochan who she raised single handedly until she got married.
- 4.3 The applicant resides at Sentamu Road, Luzira Zone 5, Nakawa Division, Kampala District where she has a 5 bedroom house, boy's quarters and enough space for many people.
- 4.4 She is financially able to care for the children even in retirement as she has rental properties in Kampala and a network of friends in Italy who support her financially.

5.0 Evidence of the Petitioner.

1. The petitioner is a citizen of Uganda born on 22nd November, 1953. Her national Identity Card and Birth Certificate are attached and marked annexures **"A"** and **"B"**.



2. She presented a Police Clearance Certificate marked **“C”** in evidence of the fact that she does not have a criminal record in Uganda or any other country.
3. The Petitioner attached a recommendation on her suitability to adopt marked **“D”** from Cheptoris Hilda of the Directorate of Gender Community Services and Production, the Probation and Welfare Officer of Nakawa Division, Urban Council, Kampala.
4. The child’s siblings Morris Bongomin and Achiro Rosemary consented to the guardianship and their consents are attached and collectively marked **“E”**.
5. The child has been in the Petitioner’s care since February, 2021 and photos in evidence of this were attached and marked **“F”**.
6. The petitioner has one adopted child Rosemary Oyella Ochan and the Adoption Order is marked **“G”** on her affidavit.
7. The Probation and Social Welfare Officer carried out a home study report which is attached and marked **“D”**
8. The Petitioner further attached recommendations from her former employer, parish priest and LC 1 Chairman of the area where she resides in Kampala marked **“H1”**, **“H2”** and **“H3”** respectively.
9. The Petitioner attached bank statements marked **“I”** in evidence of the fact that she is able to look after the child.
10. The Child’s birth certificate was also produced before this court and marked **“K”** on Bongomin Morris’s affidavit in support of the Petition along with the Death Certificate of the child’s mother Lalam Grace marked **“L”**.



11. The child's brother also attached release forms from the orphanage where the child was placed marked "M".

6.0 RESOLUTION OF ISSUES.

6.1 Issue 1: Whether the High Court is seized with Jurisdiction to entertain this matter?

6.1.1 The Jurisdiction of this Petition is provided for under **Article 139 (1) of the 1995 Constitution of the Republic of Uganda**, which provides, that; "The High Court shall, subject to the provisions of the Constitution, have unlimited original jurisdiction in all matters" in addition Section **43B (b) of the Children's Act, Cap 59** provides for Court's jurisdiction in handling matters of guardianship.

6.1.2 In the instant application, the child Acaa Gifty Josehine Bakhita is a Ugandan born on the 28th April, 2014. She was born to a Ugandan mother Lalam Grace and to an unknown father. The Petitioner is a Ugandan citizen born on 22nd November, 1953 in Lira Uganda. Section 43A on legal guardianship applies to guardianship of children in Uganda by citizens of Uganda and provides that persons who are not citizens of Uganda are not eligible to apply for legal guardianship. The Petitioner is a Ugandan citizen, therefore the issue on jurisdiction is accordingly resolved in the affirmative.

6.2 Issue 2: Whether the Petition qualifies to be granted a Guardianship Order in respect of the child ACAA GIFTY JOSEPHINE BAKHITA?



6.2.1 A Guardian is a person who has the legal authority and duty to care for another's person or property, especially because of the other's infancy, incapacity, or disability. (Black's Law Dictionary 8th Edition at page 2074). The Oxford English Dictionary defines Guardianship as the state or position of being responsible for somebody/something. Legal guardianship of children in Uganda is provided for under **Part VI of the Children (Amendment) Act, 2016, Section 43A to 43M.**

6.2.2 The Petitioner is aged 70 years old according to her Birth Certificate and unmarried. This is evidenced by her national Identity Card and Birth Certificate attached and marked annexures **"A"** and **"B"**.

6.2.3 **Section 43A and 43B of the Children Act (as amended)** provides that only Ugandan citizens shall be eligible to apply for legal guardianship, the applicant ought to be any person above the age of 18 years and the petition should be accompanied by a Probation and Social Welfare Officer's report. The Probation and Social Welfare Officer Kampala Capital City Authority, Cheptoris Hilada carried out a home study report which is attached and marked **"D"**. In this report, she states that she has carefully considered that this is genuine case where legal guardianship is the best alternative care. That she has no doubt that the guardianship application is necessary and intended for the general wellbeing of the child in question. It was upon this submission that she recommended that the Petitioner be awarded legal guardianship over the child.



- 6.2.4 **Section 43F (2) (b) of the Children Act, Cap 59 as amended** provides that the Petitioner must have no criminal record. She presented a Police Clearance Certificate marked “**C**” in evidence of the fact that she does not have a criminal record in Uganda or any other country. The Petitioner has never been convicted of Child Abuse or any criminal offence she is therefore a person of good conduct. I find that the Petitioner has no criminal record.
- 6.2.5 **Section 43F (2)(c) of the Children Act, (Supra)** provides that the Petitioner must have a recommendation concerning her suitability as a guardian from a Probation and Social Welfare Officer or other competent authority in Uganda or in the applicant’s country of residence. The Petitioner attached a recommendation on her suitability to adopt marked “**D**” from Cheptoris Hilda of the Directorate of Gender Community Services and Production, the Probation and Welfare Officer of Nakawa Division, Urban Council, Kampala dated 8th September, 2022. The Probation and Social Welfare Officer, in this report recommended guardianship by the Petitioner as the best alternative care for the child.
- 6.2.6 In addition, the Petitioner further attached recommendations from her former employer, parish priest and LC 1 Chairman of the area where she resides in Kampala marked “**H1**”, “**H2**” and “**H3**” respectively who recommended her as a suitable person to be granted a guardianship order over the child the subject of this petition.



6.2.7 **Section 43F (3) of the Children Act (Supra)** as per paragraph 14 of the petition, the Petitioner averred that she did not receive or agree to receive and no person made or has given or agreed to make or give her any payment or reward in consideration of her consent to the Petition for issuance of the Guardianship Order in respect of the child. This court is therefore satisfied that the Petitioner has not made, given or agreed to make any payment or other reward in consideration of the guardianship. Court therefore finds that the Petitioner has duly satisfied the legal requirements under **Section 43F (3) of the Children Act, Cap 59.**

6.2.8 According to **Section 43F (1) of the Children Act. Cap. 59**, the court shall before making a Guardianship Order satisfy itself that— (a)there is no known relative or next of kin of the child, (b) the relative or next of kin are unwilling or unable to take parental responsibility of the child, (c) all alternative care options available to the child have been exhausted, and (d) the child is suffering or likely to suffer significant harm under present custody.

6.2.9 In this regard, the child’s mother is deceased and her death certificate was produced before this court marked **“L”** on Bongomin Morris’s affidavit in support of the petition. The child’s father is unknown. The child’s siblings Morris Bongomin and Achiro Rosemary consented to the guardianship and their consents are attached and collectively marked **“E”**. They both contend that they are unable to care for the child and neither can any other relative or family member. There is no other alternative party/person that can care for the child. The child has been in the care of the Petitioner since she was removed



from St Jude's Children's Home Orphanage in Gulu District where she has been well taken care of. It is this court's finding that the Petitioner has satisfied all the legal requirements for Legal Guardianship of the child.

7.0 Issue 3: Whether the Petition is in the best interest of the child?

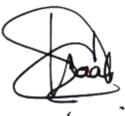
7.1 It is well known that in all children's matters, their welfare shall be of paramount consideration. This is a concretized principle in dealing with Children as the determination of whether the prospective guardian is a suitable parent is based on a finding that a legal Guardianship Order is in the best interest of the child. The law requires the focus to be placed on the best interest of the child, rather than the interests of the biological parents, guardian parent(s) or any one else.

7.2 **The Court is at all times guided by Section 3 of the Children Act, Cap. 59 (Supra)** that provides that, the welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines the question in respect to the upbringing of the child, the administration of a child's property, or the application of any income arising from that administration.

7.3 **The term welfare was defined in the case of Nakaggwa Vs Kigundu (1978) HCB 310** to mean that all circumstances affecting the well-being and upbringing of the child have been taken into account and the Court ought to do what a wise parent acting on behalf of the Child ought to do.



- 7.4 In consideration by this court, is the fact that the Petitioner has the necessary experience, having provided support to a number of children, enabling them acquire an education including Ayugi Gloria aged 25 years, Kiya Daphine aged 15 years, Akot Olivia 17 years and Akello Cinderella aged 18 years. The Petitioner also has an adopted child named Oyella Rosemary Ochan who she raised single handedly until she got married.
- 7.5 The Petitioner also has a home where she resides at Sentamu Road, Luzira Zone where she has a 5 bedroom house, boy's quarters and enough space for many people. She has the space that will allow the child to thrive and grow.
- 7.6 The Petitioner is also financially able to care for the children even in retirement as she has rental properties in Kampala and a network of friends in Italy who support her financially. She attached bank statements marked "I" in evidence of the fact that she is able to look after the child.
- 7.7 The Petitioner under paragraph 19 of her affidavit in support of this petition, committed to caring for the child, looking after her health, allowing the Probation and Social Welfare Officer to visit her home and see the child at any time and inform the PSWO when the child is ill.
- 7.8 The Court acknowledges that the child has been in the care of the Petitioner who is willing and able to care for this child and provide her with a home that will allow her to grow and thrive. The child will have an education that will help her become a contributing and responsible citizen of Uganda. The Court finds that this is every



child's right and entitlement. I therefore find the placement of the child in custody of the Petitioner to be in her best interest.

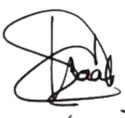
7.9 In the circumstances and for the forgoing reasons, I find that this Petition has met the conditions for grant of a Guardianship Order. I am satisfied that the Petitioner has complied with the legal requirements to be granted legal guardianship of the child, and that the guardianship is in the best interests of the child.

8.0 Conclusion

8.1 The Petitioner has met all the conditions as provided for under **Section 43F of the Children Act, (Supra)** and I hereby allow this Petition.

8.2 Accordingly, therefore this petition is granted in favor of the Petitioner with the following orders; that:

- a) The Petitioner **SYLVIA ROSE ADONG OTENG** is hereby appointed the Guardian parent of the child **ACAA GIFTY JOSEPHINE BAKHITA**.
- b) The Parental rights of all others in respect to the child **ACAA GIFTY JOSEPHINE BAKHITA** not previously terminated, are hereby terminated.
- c) This Guardianship Order vests parental responsibility of the child, **ACAA GIFTY JOSEPHINE BAKHITA** in the Guardian **SYLVIA ROSE ADONG OTENG**.
- d) The Guardianship Order shall remain in force until the child **ACAA GIFTY JOSEPHINE BAKHITA** attains the age of eighteen (18) years.



- e) The Petitioner **SYLVIA ROSE ADONG OTENG** shall have exclusive care, custody and control of the child, **ACAA GIFTY JOSPEHINE BAKHITA** free from claims or hindrances of all others, and shall be held responsible for her maintenance, education and support.
- f) The Registrar General of Births and Deaths is hereby directed to make an entry recording this Guardianship in the Guardianship Register and submit a copy of the order to the National Children Authority.
- g) This registration shall be within 14 days from the grant of the order.
- h) This Guardianship Order shall be furnished to Consular Department in the Ministry of Foreign Affairs.
- i) The Petitioner **SYLVIA ROSE ADONG OTENG** is hereby authorized to travel with the child **ACAA GIFTY JOSEPHINE BAKHITA** to Italy and any other country of her choice.
- j) The Guardianship Order shall cease to apply where the guardian dies or is suffering from infirmity of mind.
- k) Costs of this petition shall be met by the Petitioner.

I so Order.

Dated, Signed and Delivered by email this 20th day of November, 2023.



**CELIA NAGAWA
JUDGE**