

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
FAMILY CAUSE NO.42 OF 2022

IN THE MATTER OF THE CHILDREN ACT, CAP 59 AS AMENDED
IN THE MATTER OF KENNETH GERALD MINOR AGED 16 YEARS
AND BUKENYA MALCOM JOSEPH (INOR AGED 11YEARS)
IN THE MATTER OF AN APPLICATION FOR LEGAL
GUARDIANSHIP

BY BAMUTIRE (MOTHER OF THE ABOVE NAMED MINORS)

HON. LADY JUSTICE CHRISTINE KAAHWA

RULING

The Petitioner brought this Application for legal guardianship of Matovu Kenneth Gerrard aged 16 years old and Bukenya Malcom Joseph aged 11years. The petition is brought under Sections 43B of the Children's Act Cap 59 as amended. She sought the following orders that;

1. That the Applicant/Petitioner be granted legal guardianship order for Matovu Kenneth Gerrard and Bukenya Malcolm Joseph for the purposes of sell of land comprised at Kyaggwe Block 62 Plot 204, land at Mutuba III, Kiumu and Konero, Mukono District.
2. That such further or other orders be made to the case as may be required.

The Petitioner/Applicant avers that she is the biological mother of the two children mentioned above, she is a Ugandan citizen and is one of the registered owners of the land comprised in Kyaggwe Block 62 Plot 204

jointly with her children Bulya Maria Antonny Cindy (adult), Matovu Kenneth Gerrard (minor) and Bukenya Malcom Joseph(minor); the father of the children Senkindu Francis died on the 20th February 2018 at China-Uganda Friendship Hospital Naguru; the Applicant is now a single mother who has been faced with immense financial responsibility in raising school fees, campus tuition and money for other basic needs for her children, the minors inclusive for four years.

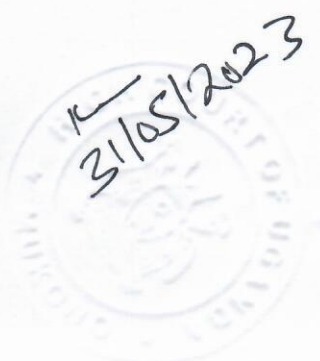
That due to the prevailing financial constraints, it has become necessary for the Applicant/Petitioner to sell off the land which is jointly owned with her children to be able to meet the minors' fees, welfare expenses and capitalize her business that provides income for the children's upbringing. Additionally, that since the minors have not yet obtained contractual capacity, it is necessary that this application is granted to enable the applicant transact and sign forms on behalf of the minors. Lastly, that it is in the interest of the minors' welfare that the application is granted.

A Supplementary Affidavit was deposed by the Applicant wherein she stated that Senkindu Francis(deceased), father of the minors bought the land from Kinene Charles on 20th September 2012. The Sale Agreement and the translation was attached.

Representation:

Ms. Leticia Nanyomo from Nampadu, Mugwanya, Muwawu and Co. Advocates represented the Petitioner.

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Hearing of the Application:

The Applicant filed written submission on the 9th February 2023. When this matter came for hearing on the 4th April 2023, the Court directed that the minors be presented in court and requested for additional information. The Applicant filed a supplementary affidavit on the 13th April 2023 and attached the additional documents.

On the 8th May 2023 this matter came for hearing and the minors together with their sibling Bulya Maria Antonny Cindy were present in Court. The minors and their mother were identified and interviewed by Court. The customary marriage certificate was produced in Court.

Issues:

1. Whether the Court has jurisdiction to entertain this Application?
2. Whether it is in the best interest of the children that the Petitioner be granted a Guardianship Order?

Resolution:

Issue 1. Whether the Court has jurisdiction to entertain this Application?

Article 139 (1) of the Constitution read with section 14 of the Judicature Act, Cap 13 grants the High Court unlimited jurisdiction in all matters.

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

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(which Uganda ratified in 1990); Article 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 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**, "*...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....*"

Section 43B of the Children Act as amended allows persons of Ugandan citizenship to make applications for Legal Guardianship.

Under 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.

Article 26 (1) of the constitution of Uganda provides that "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 eighteen years.....'

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

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Section 1 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."

This Court has the jurisdiction to entertain the Application the Court shall apply the principles enshrined in Section 3(3) of the Children Act to render this decision.

Issue 2: Whether it is in the best interest of the child that the Petitioner be granted a Guardianship Order?

In the instant application the Applicant has established that she is the biological mother of the minors by production of the birth certificates. She has also proved that their father one Francis Senkindu died in February 2018. A copy of the Land Title for the suit property was attached which shows that she holds that property jointly with the 2 minors and her adult child Maria Cindy Bukenya. The school fees receipts were presented for the two minors who are enrolled in Seeta High School and Hillside Primary School.

When this matter came up for hearing on the 8th May 2023, the Petitioner/ Applicant produced the original documents of all the annexes to the Affidavits. The Court was able to ascertain that the children are being educated as deposed in the Affidavits. The minors were presented in Court and they appeared healthy and well kempt and in good spirits. It is therefore not in doubt that their mother has their best interests at heart.

The Sale Agreement in regard to the suit property shows that the father of the children bought the land which was subsequently registered in the names of the children and their mother.

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A copy of the Customary Certificate was produced which shows that a cultural marriage ceremony took place between the mother and father of the children.

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.

The Petitioner in the instant case under paragraph 2 of the affidavit in support of the Application stated that he is the biological mother of the minors and provided proof of a birth Certificates to that effect. That she is the one that has been taking care of the children singularly after the demise of one Sekindu Francis, the father of the children.

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 child involved. **(See: Re Trevor Mugumu (Child) Family Cause 68/2019).**

It is my finding that the Petitioner does not display adverse interests as against the children who are the subject of this Petition. The reason behind the desired sale of land comprised Kyaggwe Block 62 Plot 204, Kiumu and Konero, Mutuba III, is to ensure that all needs of the children are met as their mother has the sole responsibility of paying fees and meeting the other need of the children.

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

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1. The Petitioner Barbra Bamutire is appointed as the legal guardian of Kenneth Gerrard aged 16 years old and Bukenya Malcom Joseph aged 11years.
2. Barbra Bamutiire is allowed to sell land being private Mailo, comprised in Kyaggwe Block 62 Plot 204, Kiumu and Konero, Mutuba III for the sole purpose of catering for the needs of the minors.
3. The Consent of Bulya Maria Antonny Cindy, who is jointly registered on the Title should be sought before the sale of the said property.
4. Costs of this Petition to be met by the Petitioner.

Dated at **Mukono** this ^{31st}.....day of **May 2023**.


Christine Kaahwa
JUDGE

