

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)
FAMILY CAUSE NO. 31 OF 2023
IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP
OF SEBAHIRE CLYTON DYLAN (MINOR)

AND

IN THE MATTER OF LAND COMPRISED IN PRIVATE REGISTER
BLOCK 383 PLOT 5565 AT KITENDE, BUSIRO COUNTY WAKISO
DISTRICT

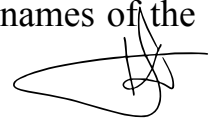
BY

LUSWATA CATHERINE.

Before: Justice Ketra Kitariisibwa Katunguka

Ruling

1. Luswata Catherine brings this application seeking orders that she be appointed a legal guardian of Sebahire Clyton Dylan (herein called ‘the child’), for purposes of securing a loan facility from Centenary Bank by pledging a plot of land comprised in Private Mailo Block 383 plot 5565 situated at Kitende, Busiro county Wakiso district, registered in the names of Mugisha Sebahire Vianney (herein called ‘the child’), to enable her develop the land.
2. The grounds of the application are in the notice of motion and the affidavit in support deposed by the applicant and briefly; that she is the biological mother of the child who was born on the 10th day of October 2018; the biological father of the child is Mugisha Sebahire Vianney; the applicant is desirous of obtaining a credit facility using the land title of subject land which is registered in the names of the



child; the loan facility is to pay for the construction materials and works for the commercial building on the land to boost its value;

3. The applicant is self-employed managing a business of importation of cargo located at the Islamic building opposite St. Matia Mulumba church Old Kampala; she is able to repay the loan on the terms and conditions of the bank; it is in the best interests of the child that a guardianship order is granted ; part of the loan funds shall be utilized to boost her business to allow for the provision of basic needs and amenities for the general welfare and sustenance of the child.

Supporting documents:

4. The application is accompanied by; a copy of the applicant's National Identity card NIN: CF79024102469J and a copy of her Ugandan passport No. A00015485; the child's biological father's National Identity card NIN: CM79061109QMLH, birth certificate of the child No. 20230411-133403; certificate of title for land comprised in Block 383 plot 5565 land at Kitende Busiro county, Wakiso district registered in the names of the child herein; agreement of sale of the subject land dated 5/1/2022; proposed residential plan in plot 5565 block 383 land at Katende; loan application form by the applicant.

Representation:

5. The applicant is represented by counsel Mpirirwe Stuart of M/s Arthur-Arutha Legal & Co. Advocates.

Determination:

Counsel filed written submissions but did not frame issues for court's consideration.; from the facts of the application the issue for resolution is :

Whether it is in the best interests of the child that the applicant be granted a guardianship order?

6. The principle of a child's best interest is relevant and a basis for any legal decision involving a child; the welfare principle cuts across both local and international legislation; **Article 3(1)** of the United Nations Convention on the Rights of a Child states that; in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.



Section 3 of the Children Act, 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 any question in respect to the upbringing of a child, the administration of a child’s property, or the application of any income arising from that administration.” (see **Mark Siduda Trevor (an infant) Family Cause No. 213 of 2014 and the case of Deborah Joyce Alitubeera Civil Appeal No. 70 of 2011**).

7. **Section 1 (k)** of the Children Act defines a guardian, as a person having parental responsibility for a child. Guardianship is loosely defined as guarding someone’s interests. It is deduced from the word “guard” defined by Oxford dictionary as “*watch over in order to protect or control; to protect against damage or harm.*” Legal guardianship is geared towards arming whoever has custody of a child with authority to make decisions concerning the protection, care, and discipline among others. The protection goes beyond the physical protection and includes protection of a child’s rights and interests. **Section 43H (1) of the Children (Amendment) Act, 2016**, provides: “*...all persons appointed as guardians have parental responsibility for the child ...*”; section 1(o) of the same act provides 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.*”
8. The above principle was considered in the case of **Rwabuhemba Tim Musinguzi Vs Harriet Kamukume Civil Application no. 142 of 2009**, to the effect that “parents have a fundamental right to care and bring up their children and that such a right is a constitutional right”. A suitable guardian must be legally recognized to be able to make binding decisions concerning health, financial and property rights among others, on behalf of the child; but always in the best interests of such child; (see: **In Re: An Application for Guardianship by Wandera Peter Family Cause No.004 Of 2017**).
9. **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 that a person has capacity to contract where that person is eighteen years. According to the Birth Certificate adduced in evidence Sebahire Clyton Dylan the child subject of this application was born on 10/10/2018 to Mugisha Sebahire Vianney and Luswata Catherine. The said child is



therefore 4 years and a minor within the definition of law and cannot contract unless through a legal guardian.

10. The applicant purchased the land in question for the child and registered it in the child's names; the child's biological father told court that he consents to this application. The applicant seeks to obtain a loan facility using the land title which is registered in the names of the child with a purpose of funding construction works of a commercial residential building on the land which will add value to the land; she intends to use part of the funds to boost her business and undertakes to repay the loan on the terms and conditions of the bank.
11. Being the biological mother of the child, I find the intentions of the applicant backed up with good will for it is on that basis that the land was in the first place registered in the child's names; the fact that out of her business, she will provide for the child's basic needs and wellbeing, I agree that the child is the direct beneficiary from the loan facility. I am convinced that this application is brought in the best interests of the child;

The application has merit and it is allowed with the following orders: -

- 1) **Luswata Catherine** is appointed the legal guardian of **Sebahire Clyton Dylan** for purpose of securing a loan facility using a plot of land comprised in **Block 383 plot 5565 Kitende, Busiro County, Wakiso district** registered in the names of the Sebahire Clyton Dylan.
- 2) **Luswata Catherine** shall repay the loan facility on the terms and conditions of the bank;
- 3) The applicant shall bear the costs of this application.



Ketrach Kitariisibwa Katunguka
Judge
3/07/2023

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