

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS CAUSE NO. 142 OF 1993
IN THE MATTER OF S. 9 OF THE JUDICATURE ACT 1962

AND

IN THE MATTER OF AN APPLICATION BY GABRIEL KANGWAGYE AND KATE
MARGARET KANGWAGYE TO BE APPOINTED JOINT GUARDIANS OF (1) NANCY
(2) SHILA KANGWAGYE (3) ELIZABETH KANGWAGYE (4) PAMELA KANGWAGYE
(5)DAISY KANGWAGYE

Before: The Honourable Lady Justice M. Kireju

Ruling

The applicants, Gabriel Kangwagye and Kate Margaret Kangwagye brought this application under the provisions of S.9 of the Judicature act seeking an order of this court that they be appointed guardians of their minor children, namely Nancy Kangwagye, Sheila Kangwagye, Elizabeth Kangwagye, Pamela Kangwagye and Daisy Kangwagye.

The applicants want to be in charge of the said minor children's interests in the property known as Plot No 53 Block 'B' Ntinda in the City of Kampala with power to mortgage sell, lease and in any other way deal with the interests of the said minor children in the said property for the benefit of the minor children. The application was supported by an affidavit of Gabriel Kangwagye deponed on 11/10/1993.

The applicants were represented by Mr. Mulenga S.C. of M/S Mulenga & Karemera Advocates. The main grounds of this application as presented by counsel and also outlined in the Notice of Motion were that the property in question was previously mortgaged to secure repayment of a loan obtained and utilised for construction of the buildings comprised thereon. The applicants together with their minor children are now registered owners of the said property as joint tenants but were issued with a certificate of title free from any encumbrances.

The previous mortgagor has agreed not to recall the loan forth with on condition that all the registered proprietors execute a fresh legal mortgage. It was further stated that in the interest of

the minor children as well as their applicant parents to maintain the mortgage as they are not able to pay off the loan immediately, that it was necessary to appoint the applicants to be guardians of the minor children with power to deal with the said property and to contract and execute all the necessary documents on behalf of the minor children.

The affidavit of Gabriel Kagwagye expounded on the above grounds. He deponed that the property was initially registered in his names for an initial term of 5 years dating from 1988 and subject to a building covenant. In 1991 he mortgaged the property to housing finance Company and got a loan of Shs. 4,000,000/ to enable him construct residential premises there of then the initial term of 5 years of the lease expired he applied for extension and included his wife and the said minor children the registration was made without the encumbrances. However, the loan has never been paid.

The property constitutes the residence for the applicants and their children, the loan will continue to be serviced from other family income. The court is empowered under s.9 of the Judicature, Act 1967 to and control guardians of infants and estates of infants. The wide discretion given to court under this provision must be exercised with great care as the infants are vulnerable and could suffer at the hands of unscrupulous guardians. The paramount consideration is the interest and welfare of the infants. The court has to look at the particulars of each case and decide whether the infant stands to benefit from the guardianship, in the present case the applicants are the natural parents of the minor children. The property to be mortgaged comprises of the residence where the whole family lives. The property if not mortgaged to the company as security for the loan already advanced, the company may decide to enforce its rights under the first mortgage which would leave the minor children without where to live. Gabriel Kangwagye says that he has no money at the moment to pay off the loan but is willing to service the loan out of other family income.

I am of the view that the applicants as natural parents of their minor children have good intentions for their children. It is in the interest of the children that the property be mortgaged as security for the repayment of the loan which the applicants undertake to repay. There is no evidence that the applicants have any interest adverse to those of the minor children. From the foregoing, I am satisfied that it is in the interest and for the welfare of the five minor children that the applicants be appointed Guardians in order to mortgage, sell, lease and in other

way deal with the interests of the minor children in the said property. The application is accordingly granted as prayed.

The applicants Gabriel Kangwagye and Kate Margaret Kangwagye are appointed Guardians with powers to mortgage, sell, lease and in other way deal with Plot .53 Block 'B' ntinda for the benefit of the minor children namely: Nancy Kangwagye, Sheila Kangwagye, Elizabeth Kangwagye, Pamela Kangwagye and Daisy Kangwagye.

Nothing here in shall preclude the said minor children or any one of them when they or she shall have attained their or her majority from applying to have this order discharged or varied, but without prejudice to anything lawfully done here under.

I so order.

M. Kireju

JUDGE.

25/11/91