

UGANDA / JUDGMENT

In Re: an application by Edema (Family And Children Cause No. 0003 of 2017) [2017] UGHCFD 13 (22 November 2017)

[2017] UGHCFD 13

COURT

HC: Family Division (Uganda)

BEFORE

Stephen Mubiru, J

CASE / FILE NUMBER

Family And Children Cause No. 0003 of 2017

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ARUA

FAMILY AND CHILDREN CAUSE No. 0003 OF 2017

IN THE MATTER OF THE MATTER OF THE CHILDREN ACT, CAP 59

AND

IN THE MATTER OF AN APPLICATION FOR }

GUARDIANSHIP BY RODRIGO BONIFACE EDEMA }..... APPLICANT

Before: Hon Justice Stephen Mubiru.

RULING

This is an ex-parte application for Legal Guardianship of three children, namely; Laurent Kabila aged 17 years, Dominika Mundrua aged 12 years and Sabina Viola Iziku, aged 12 years, all the children of the late Mr. Vundruku Andrew (father) and Ms. Minike Vundru Angelina (mother), both of whom died on 11th April, 2007 in an ambush at the hands of the Lord's Resistance Army. The applicant is their paternal uncle and brings this application by petition pursuant to section 3 of *The Children Act* and sections 43A, 43B and 43F of *The Children* *(Amendment), 2016*.

In the submission of counsel for the applicant, Mr. Samuel Ondoma, the applicant is a Ugandan aged 49 years old, a copy of the passport is attached as annexure "B" to the petition. The applicant is the one taking responsibility for the welfare of the children by providing them with education. He is providing feeding and the one providing medical treatment for the children shelter and clothing. The children are all in his custody since 2007, when the biological parents died in an ambush. The medical certificates of their death are attached and marked as annexure "C1" and "

C2" to the petition.

There is a probation and social welfare report which proves that the applicant is a suitable person to be the guardian of the children. The application is in the interest of the children and they have consented to it. The court had opportunity to interact with the children and they consented that the uncle should be their guardian. It is in the best interests of the children that the applicant be granted the order otherwise they have no one to care for them. Apart from the applicant no one is willing to provide for their welfare. Their parents did not leave behind any property. They were tilling the applicant's land and living in his house in Moyo.

The applicant is a businessman dealing in general merchandise. He trades in Kampala and Moyo. Right now he went to China for a business trip. He resides in Zone B village in Mutungo, Nakawa Division and in Moyo he resides in Edur village Alendereya Parish, Moyo Town Council. He is represented in court by the holder of his powers of Attorney, Ms. Domnica Mugi who is also his biological mother and grandmother to the three children. The powers of attorney are dated 9th May, 2017.

A guardian is a person who is given the legal power to make decisions for another person because he or she is considered not competent to decide for himself / herself. Guardianship is thus a legal relationship between a competent adult (the guardian) and a person who because of incapacity, such as minority, is incapable of taking care of his or her own affairs (the ward). The guardian makes decisions on behalf of the ward. The guardian, by virtue of that status, is authorised to make legal, financial, shelter, education, food and health care decisions for the ward, but may be required to seek court approval for various decisions, especially those regarding the investment and disposal of the property of the ward. A guardian must always act in the best interest of the ward. In such cases, the guardian will manage the ward's finances and property and provide records to the court. The guardian acts as the legal parent of the ward for the entirety of the guardianship. Although the guardian has the same responsibilities to care for the child as a parent would, a guardianship does not sever the legal relationship that exists between a child and his or her biological parents. Instead, it co-exists with that legal relationship.

That means the guardian takes full legal and physical custody of the child and can make all the decisions about the physical care of the child that a parent would make. A guardian can be anyone: relatives, friends of the family, or other people suitable to raise the child. Because guardianship creates a legal relationship conferring upon the guardian some say in the child's future, for an applicant to qualify as a guardian, he or she must be an adult of sound mind, should have a genuine interest in the child's welfare, there must not exist any conflict of interest between the applicant and the child, the applicant must physically be able to fulfil the responsibilities, must be able to handle the physical demands of raising a child, must have enough time to care for the child, must not be likely to exploit or abuse the child, must be able to afford to raise the child, either through his or her own income or through assets left for the care of the child and shares the basic known values and morals of the child, such as religion, or should have values or morals the court would feel comfortable being instilled the child, while bearing in mind that "ociety must be willing to tolerate very diverse standards of parenting,

including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done" see (*Re L (Care: Threshold Criteria) [2007] 1 FLR 2050*).

The determination of suitability of guardianship for a child is guided by considerations of providing the best substitute care to that provided by the parents of the child. In that determination, sections 3 and 4 of *The Children Act* requires that the court should be guided by the welfare principle and best interest of the child. *Bromley's Family Law*, 8th Edition, at page 338 states that in applying the welfare principle, the court must act in the child's best interest. "...it should be appreciated that a judge is not dealing with what is ideal for the child but simply with what is the best that can be done in the circumstances..." In applying that principle, the court will consider the relationship between the child and potential legal guardian, whether the applicant is the child's preference, whether the applicant is in position to provide the best stability and continuous care for the child, he or she can best fulfil the child's needs, the moral character, fitness, and conduct of the potential guardian. The court will look at what is in the best interest of the child to make sure the child is raised in a safe, stable, and loving environment. A legal guardian can care for a child when the parents are unable to. A guardianship order ought to be motivated by the overriding requirements pertaining to the child's best interests.

Applicants for legal guardianship may show they are the next best suited to care for the child by establishing that they are ready and willing to carry out the parental responsibilities for the child. In the instant application, paragraph 10 of the petition reveals that the applicant has since the tragic death of the parents of the three children, been catering for their needs such as feeding, shelter, education and medical care. Although he already has three children of his own as disclosed in 3 of the petition, he appears to have coped well this far with the added pressures of caring for the children in respect of whom he has presented this application. This is verified by the Social Inquiry Report, annexure "D" to the petition.

Following the death of their parents, the three children need a person to bring them up, to be able to meet all their physical needs for care and also their emotional needs, acknowledging though that one is not looking for perfection. Society of course accepts diverse standards of parenting but it needs to be good enough for the three children. And that is not just a question of feeding them, supervising them, caring for them and loving them. It includes giving them an stable home in which to grow up where they will not experience physical or emotional harm. The applicant should be able to offer sensitive and responsive care. Appointment of a legal guardian for them should serve the welfare principle by providing them with a more permanent and reliable degree of protection.

Having considered the material before me, and having had the opportunity on an earlier date when the children, the subject of this application were produced before me (since it was projected that they would be sitting their end-of-term their examinations by the time the application came up for hearing), I found the three of them old enough for their ascertainable wishes and feelings to be relevant. They having then given their approval to the applicant's intentions, there does not exist any obvious conflict of interest between the applicant and the children. The applicant has already demonstrated by caring for them that he is capable of putting their needs before his own and his children's needs. I find that the applicant is an adult of sound mind, and has a genuine interest in the three children's welfare, he is physically able to fulfil the responsibilities of a guardian, will be able to handle the physical demands of raising them as his children, has enough time to care for the children, is not likely to exploit or abuse them, is able to afford to raise them through his own income and shares the basic known values and morals of the children, such as religion.

Having considered with a global, holistic evaluation, each of the points in the welfare principle checklist, and not having found any alternative options available that best meet the children's future upbringing, and mindful of the duty to afford paramount consideration to the children's welfare, I hereby appoint Mr. Rodrigo Boniface Edema of Zone B village in Mutungo Ward, Nakawa Division and also of Edua village, Elenderea Parish, Moyo Town Council as the legal guardian of Laurent Kabila aged 17 years, Dominika Mundrua aged 12 years and Sabina Viola Iziku, aged 12 years, all the children of the late Mr. Vundruku Andrew (father) and Ms. Minike Vundru Angelina (mother) of Elenderea Parish, Moyo Town Council. The applicant shall meet the costs of this application.

Dated at Arua this 22nd day of November, 2017.

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Stephen Mubiru

Judge

22nd November, 2017

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