

UGANDA / JUDGMENT

In Re: Anna Namaleme Joloba (an infant) (Family Cause N0.51 of 2013) [2015] UGHCFD 16 (12 March 2015) [2015] UGHCFD 16

COURT

HC: Family Division (Uganda)

BEFORE

Bamugemereire, J

CASE / FILE NUMBER

Family Cause N0.51 of 2013

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REPUBLIC OF UGANDA

HIGH COURT OF UGANDA HOLDEN AT KAMPALA

FAMILY DIVISION

FAMILY CAUSE N0.51 of 2013

IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF ANNA NAMULEME JOLOBA (A MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY Dr EDITH NAKKU JOLOBA (MOTHER OF ABOVE SAID MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY PROFESSOR MOSES LUTAAKOME JOLOBA FATHER (TO ABOVE SAID MINOR)

BEFORE HON LADY JUSTICE CATHERINE BAMUGEMEREIRE

Ruling

This is an Application for an application for legal guardian for purposes of managing a minor's estate. This application is brought under Sections 14, 33 and 39 of the Judicature Act and O51 rules 1 and 2 of the Civil Procedure Rules. It is brought by way of notice of motion supported by affidavit.

In the Notice Applicants pray for orders that

1. The Applicants be made Legal Guardians of the minor, Anna Namuleme Joloba
2. Cost be provided for

The application is brought way notice of motion supported by the affidavit of Dr Edith Nakku. Attached thereto is a copy of the certificate of title of land comprised in Kyaddondo Block 83 Plot 42. the subject matter of this application. The two applicants Dr Edith Nakku and Prof Joloba are biological parents to Anna Namuleme Joloba. Together with the minor, the applicants are joint proprietors of land comprised in

The Anna Namuleme Joloba, 14 years old, is a student at Makerere College School in Kampala. This Court had opportunity to talk to the minor and she informed Court that she is indeed a joint proprietor of the said property. She further stated that she is aware that the parents would like to sever part of the land, sell it and purchase a commercial income generating property with the same Nakasongola area. The minor stated that her parents are her sole providers. They pay her school fees and look after her every need. She stated that she is aware that half of the 6.8 acres of land is used for tree farming. The minor is a brilliant teenager who is well informed, conversant of her rights and hopes to become a neurosurgeon when she grows up. She also struck this Court as one who has a good relationship with her parents. She was confident and gave a sense of being secure.

Dr Edith Naku in her affidavit stated that together with her husband, Professor Dr Moses Joloba they bought land at Kyaddondo Block 83 Plot 42 measuring 6.1 acres. Anna Namuleme, an only daughter, was made a joint proprietor of this property. The purpose of the sale is to take one acre off the 6.1 acres of land and use the proceeds of sell to buy a more centrally located, commercially viable property which can be used for income generating activities like shops. In order to be able to sell however, they were required to become legal guardians of the Anna Namuleme Joloba, a child under the age of 18 years who is unable to transact being a minor.

Professor Moses Lutaakome Joloba did not depone an affidavit but gave evidence on oath in which he reiterated that as a family they had agreed to sell off part of the six acres of land in order to be able to engage in income generating activities.

The applicants seek to be appointed legal guardians of the infant in question in relation to infant's estate.

The question this Court has to ask is whether the transaction is done in the best interest of the child and whether the child stands to benefit there from?

Article 34 (1)b of the Constitution of the Republic of Uganda makes provision for what should happen while administering estates of infants. It is quoted here below:

Article 34 (1) Welfare principle.

Whenever the State, a court, a local authority or any person determines any question with respect to—

- (a) the upbringing of a child; or
- (b) the administration of a child's property or the application of any income arising from it,

the child's welfare shall be of the paramount consideration.

In the administration of a child's property or application of any income arising from it the child's welfare shall be of the paramount consideration. In the case of Gabriel Kangwagye and Kate Kangwagye, High Court Miscellany No. 142 of 1993

Kireju J (RIP) as she then was, held that

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.

This Court has to determine if this application is beneficial to the infant any way.

I have considered the peculiar circumstances of this case and having done so have come to the conclusion that the parents of the minor in this case seek to sell part of the estate in which the minor has interest in order to undertake a commercial activity to diversify their income.

The minor herself is aware of the undertaking. I find that this activity is embarked on in the best interest of the child. The parents mean well for their only daughter, no doubt.

Consequently, I find that under S.33 of the Judicature Act Cap 13 empowers the High Court to grant such remedies and reliefs to any parties in a cause as the Court deems fit. The High Court therefore has powers to grant reliefs in circumstances such as where the law does not specifically provide for the rights of parents to act on behalf of the minor children.

In view of the above findings this Court orders as follows:

1. Having found that Anna Namuleme is a minor this court is pleased to order that Dr Edith Nakku Joloba and Professor be Moses Lutaakome Joloba and hereby appointed to be legal guardians of the minor for purposes of transacting any such lawful business for and on behalf of the minor in general.
2. In particular this Court grants Authority to the said Edith Naku and Moses Lutaakome Joloba to assign, transfer, sale or to in anyway transact in land comprised in. Kyaddondo Block 83 Plot 42. Registered in the name of Edith Naku and Moses Joloba (Applicants) and Anna Namuleme Joloba (the Minor) for the benefit of the minor.
3. The Applicant shall meet the costs of this application.

It is so ordered

Catherine Bamugemereire

JUDGE

12 March 2014

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