

UGANDA / JUDGMENT

In Re: Gavin Terry Kaggwa & Ors (Misc. Cause No. 20 of 2016) [2017] UGHCFD 17 (14 August 2017)

[2017] UGHCFD 17

COURT

HC: Family Division (Uganda)

BEFORE

Elubu, J

CASE / FILE NUMBER

Misc. Cause No. 20 of 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT Jinja MISC. CAUSE No. 20 OF 2016

AND

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

AND

**IN THE MATTER OF AN APPLICATION FOR A GUARDIANSHIP ORDER BY KIRABO
ANNET AND BUSINGYE KELLEN (MOTHERS)**

AND

**IN THE MATTER OF GAVIN TERRY KAGGWA AGED 13 YEARS, TATIANA DESIRE
KAGGWA AGED 11 YEARS, DANIELA DAISY KAGGWA AGED 9 YEARS, DION DENISE
KAGGWA AGED 7 YEARS, TREVOR OX KAGGWA AGED 4 YEARS and LUNKUSE
DEBORAH AGED 8 YEARS**

BEFORE: HON. JUSTICE MICHAEL ELUBU

RULING

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The Applicants KIRABO ANNET and BUSINGYE KELLEN bring this cause for orders that they be appointed legal guardians of:

1. GAVIN TERRY KAGGWA AGED 13 YEARS
2. TATIANA DESIRE KAGGWA AGED 11 YEARS
AGED 9 YEARS
3. DANIELA DAISY KAGGWA
4. DION DENISE KAGGWA AGED 7 YEARS
AGED 4 YEARS
- TREVOR OX KAGGWA
AGED 8 YEARS
6. LUNKUSE DEBORAH

The background to this matter is that all the six minors are the children of one Alex Kaggwa who died intestate on the 08th day of July 2015.

At his death or so soon thereafter the deceased father's sisters are alleged to have descended on his property and started disposing of it before Letters of administration had been issued by this court.

The applicants here are biological mothers of three of the minors, that is, Kirabo Annet is mother to Daniela Daisy Kaggwa and Don Denise Kaggwa while Busingye Kellen is Deborah Lunkuse's mother.

One Namugaya Caroline is the biological Mother of Gavin Terry Kaggwa and Desire Denise Kaggwa. Mutesi Erina is Trevor Ox Kaggwa's mother.

The reason the applicants lodged this application was to obtain the legal authority to file for letters of administration considering that none of them was legally married to the deceased Alex Kaggwa.

Namugaya Caroline and Mutesi Erina were both in court at the bearing and confirmed the contents of their respective statutory declarations where they had affirmed that each supports this application.

The first issue this court will resolve is whether it had jurisdiction to hear and determine this application.

Art 139 of The Constitution of The Republic of Uganda confers upon this court unlimited original jurisdiction in all matters. S.14 of The Judicature Act operationalises Art 139 of The Constitution. In Re Francis Palmer (2007) HCB 99 the Court of Appeal

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held that the High Court has the jurisdiction to entertain applications for guardianship orders. I therefore find that this court has the jurisdiction to entertain this application.

Secondly the court shall consider whether a grant would be in the best interest of the children?

In determining the best interest of the children in this matter I was guided by S.3 of The **Children Act** which enjoins court to consider the welfare principle and children's rights when making any decision relating to the child.

The welfare principle is the paramount consideration whenever court is determining any question with respect to the upbringing of the child.

In the instant case the children's father died intestate and none of the mothers of the children here were legally married to the deceased. It is alleged farther that the estate has been tampered with or wasted. It is the prayer of two of the two applicant mothers, that they represent the interests of all the children by their appointment as guardians.

Under S.1 of The Children's Act Cap 59 a guardian is a person with parental responsibility for a child. Parental responsibility on the other hand means all rights, duties, powers and authority which by law a parent of a child has in relation to a child.

A parent would by law in my view have the power and authority to protect any property rights of and also care for the social welfare of the child. That would include to secure the upbringing of the child by catering to all its needs. It would therefore be proper in a case such as this for the two applicants to be granted the order prayed for so that they can pursue all rights that accrue to the minors here which includes the pursuit of letters of administration of their late fathers estate.

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In the result it is ordered that a guardianship Order be granted to KIRABO ANNET and **BUSINGYE KELLEN** for:

GAVIN TERRY KAGGWA aged 13 YEARS, TATIANA DESIRE KAGGWA aged 11 YEARS, DANIELA DAISY KAGGWA aged 9 YEARS, DION DENISE KAGGWA aged 7 YEARS, TREVOR OX KAGGWA aged 4 YEARS and LUNKUSE DEBORAH aged 8 YEARS.

MICHAEL ELUBU JUDGE

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