

UGANDA / JUDGMENT

# In Re: Kyeyune Kigongo & Ors (all infants) (Family Cause 143 of 2012)

## [2015] UGHCFD 14 (19 May 2015)

[2015] UGHCFD 14

## COURT

HC: Family Division (Uganda)

## BEFORE

Wolayo, J

## CASE / FILE NUMBER

Family Cause 143 of 2012

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## THE REPUBLIC OF UGANDA

## IN THE HIGH COURT OF UGANDA AT KAMPALA

## FAMILY DIVISION

## FAMILY CAUSE 143 OF 2012

## IN THE MATTER OF THE CHILDREN ACT CAP 59

## AND

IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF RODNEY KYEYUNE KIGONGO, RHYS WASSWA SEBATINDIRA, RENE KATO KAZIBWE AND RYAN KIZZA BY ROSALINE NYENDWOHA

## BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

## RULING

This is an application for legal guardianship brought by notice of motion *\*ex parte\**, under Articles 34 & 139(1) of the Constitution; sections 14(1), 33 & 39 of the Judicature Act, cap 13; sections 4 & 5 of the Children Act cap 59; section 98 of the Civil Procedure Act cap 71; and Order 52 rules 1 & 3 of the Civil Procedure Rules SI 71 -1. The applicant is seeking orders that she be appointed legal guardian of **Rodney Kyeyune Kigongo, Rhys Wasswa Sebatindira, Rene Kato Kazibwe** and **Ryan Kizza** her natural children and she be allowed to mortgage, manage or sell land comprised in Busiro Block 359 Plot 1569, land at Nakatema Nsangi.

The grounds of the application are that:-

1. The infants are the biological children of **Rosaline M. M. Nyendwoha** and **M. Kyeyune**.
2. The applicant has at all material times been looking after the infants who are her children.
3. In 2011 the applicant acquired land comprised in Busiro Plock 359 Plot 1569 at Nsangi and was jointly registered on the title with the infant children.
4. The applicant being of humble means has been constrained in the daily upkeep and maintenance of the infants.
5. The applicant is a person of good repute and moral standing, and being the infants' biological mother, is a fit and proper person to be appointed their legal guardian.

The application is supported by two affidavits of the applicant. In addition to her supporting affidavits, the applicant attended court and was interviewed on oath. The minors, **Rodney Kyeyune Kigongo**, **Rhys Wasswa Sebatindira**, **Rene Kato Kazibwe** and **Ryan Kizza**, the subject of the application, also attended court, and were examined on oath by court after being found to be of understanding age.

The background is that the applicant who is the biological mother of the minors purchased the land in question in 2011 to generate income to cater for the children's needs. She was registered on the land jointly with the minors. She would like to sell the land to enable her raise capital to start a business to generate more income to meet the children's needs. Learned Counsel Steven Musisi submitted for the applicant that it is in the best interests of the minor that the applicant be granted legal guardianship to enable her dispose of the land to cater for the minors' interests and welfare.

Article 139(1) of the Constitution, read with section 14 of the Judicature Act, cap 13, give the High Court unlimited original jurisdiction in all matters. Section 98 of the Civil Procedure Act empowers the High Court to invoke its inherent powers to grant remedies where there are no specific provisions. In all matters concerning children, the best interests of the child shall be the primary consideration. This is a legal principle contained in Article 34 of the Constitution and the Children Act, and various international conventions ratified by Uganda concerning the rights of children.

The best interests of the child set out by the Children Act include the ascertainable wishes and feelings of the child in light of his or her age and understanding; the child's physical, emotional and educational needs; the child's age, background and other circumstances relevant in the matter.

The adduced evidence shows that the applicant is the biological mother of the minors who are under her custody. She is not married to the father of the children and is the sole provider for their basic needs. The minors are attending schools in Kampala. The applicant purchased land comprised in Busiro Block 359 Plot 1569 at Nakatema, Nsangi and registered it in her names jointly with those of the minors. The children themselves stated to court on oath that the applicant was their biological mother and that they are not opposed to their mother disposing of

the land to cater for their interests.

The applicant annexed certified true copies of the minors' birth certificates (save that of **Rodney Kyeyune Kigongo** which was a photocopy, the original having been reportedly retained at his school) as **A, B, C and D** to her supporting affidavit. They show that **Rodney Kyeyune Kigongo** is currently aged 16 years having been born on 26/08/1998; **Rhys Wasswa Sebatindira** is aged 15 years having been born on 01/04/2000; **Rene Kato Kazibwe** is also aged 15 years, having been born on 01/04/2000; and **Ryan Kizza** is aged 12 years, having been born on 20/03/2003. The photocopy of the certificate of title to the land in question, the original of which was seen by court, was annexed as **E** to the applicant's affidavit. This corroborated her evidence about the proprietorship of the land.

In this case, where the applicant, who is the minors' biological mother, seeks an order that will enable her to dispose of the minors' land which she herself bought, and where the children, who are of understanding age, are not opposed to the sale, stating that it is for their welfare, such order should be granted as it is for the welfare and best interests of the minors.

### **I accordingly make the following orders:-**

1. The applicant **Rosaline M. M. Nyendwoha** is appointed as the guardian of **Rodney Kyeyune Kigongo, Rhys Wasswa Sebatindira, Rene Kato Kazibwe and Ryan Kizza**.
2. The applicant is granted authority to dispose of the property described as Busiro Block 359 Plot 1569 land at Nakatema Nsangi for the benefit of the above said minors.
3. Costs of this application will be met by the applicant.

**Dated at Kampala this 19th day of May 2015.**

**Percy Night Tuhaise**

**Judge.**

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