

UGANDA / JUDGMENT

In Re: Nakyonzi Valeria [minor] (Family Cause 199 of 2013) [2013] UGHCFD 21 (16 December 2013) [2013] UGHCFD 21

COURT

HC: Family Division (Uganda)

BEFORE

Tuhaise, J

CASE / FILE NUMBER

Family Cause 199 of 2013

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FAMILY DIVISION

FAMILY CAUSE 199 OF 2013

IN THE MATTER OF THE CHILDREN ACT

AND

IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP OF VALERIA NAKYONYI GOZAGA
BY WALAKIRA GEORGE (FATHER OF THE ABOVE NAMED MINOR)

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This is an application for legal guardianship brought by notice of motion **ex parte**, under Articles 139(1) and 34(1) & (2) of the Constitution; sections 14 & 33 of the Judicature Act, cap 13; sections 3, 4, 5, & 6 of the Children Act; section 98 of the Civil Procedure Act cap 71; and Order 32 rule 4(1) & (2) of the Civil Procedure Rules as amended. The applicant is seeking the following orders:-

1. This honourable court does grant legal guardianship over Valeria Nakyonzi Gozaga (a minor) to the applicant herein, her biological father Walakira George.

2. This honourable court grants authority to Walakila George to sell and/or dispose of land comprised in Kyadondo Block 180 Plot 662 land situate at Kitukutwe registered in the names of Valeria Nakyonyi Gozaga (a minor) for the benefit of the minor.
3. Costs of this application be provided for.

The grounds of the application are that:-

1. That Valeria Nakyonyi Gozaga is a biological child of the applicant Walakila George.
2. That the applicant has had custody of the minor since she was born.
3. That the applicant is the sole provider of the minor.
4. That it is in the best interests and welfare of the minor, that the applicant who is her biological father is appointed legal guardian and is authorized to sell and or dispose of the property comprised in Kyadondo Block 180 Plot 662 land situate at Kitukutwe.
5. That it is the applicant's legal duty as a biological father to offer a good upbringing of the minor, administer the property and apply any income out of the property for the welfare of the minor.
6. That the applicant is a fit and proper person to pursue the minor's interests.

The application is supported by the affidavit of the applicant who attended court when the application came up for hearing. The minor, Valeria Nakyonyi Gozaga, the subject of the application, also did attend court at this court's request and she was examined on oath by this court.

The background is that the applicant bought land comprised in Kyadondo Block 180 Plot 662 land situate at Kitukutwe and registered it in the names of Valeria Nakyonyi Gozaga, his biological daughter under his custody. He seeks this court to declare him legal guardian of the minor and authorize him to sell the land so that he caters for the interests of the minor.

Learned Counsel Harriet Magala submitted for the applicant that it is in the best interests of the minor that the applicant be granted legal guardianship to enable him sell the minor's land to cater for her 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.

In this case, it is evident the applicant is the biological father of the minor who has always been under his custody. He is the one who purchased the land for her. The child herself stated to court on oath that the applicant was her biological father and she is not opposed to her father selling the land to cater for her interests. The applicant is applying for guardianship of Valeria Nakyonyi Gozaga to enable him sell the minor's land comprised in Kyadondo Block 180 Plot 662 land situate at Kitukutwe so that the welfare of the minor is taken care of.

In this case, where the applicant, who is child's biological father, seeks an order that will enable him to sell his child's land which he himself bought for her, and where the child, who is of understanding age, is not opposed to the sale, and where both state that it is for the minor's welfare, such order should be granted as it is for the welfare and best interests of the minor.

I accordingly make the following orders:-

1. Legal guardianship over Valeria Nakyonyi Gozaga (a minor) is granted to the applicant, her biological father Walakila George.
2. Walakila George is authorised to sell and/or dispose of land comprised in Kyadondo Block 180 Plot 662 land situate at Kitukutwe registered in the names of Valeria Nakyonyi Gozaga (a minor) for the benefit of the minor.
3. Costs of this application will be met by the applicant.

Dated at Kampala this 16th day of December 2013.

Percy Night Tuhaise

Judge.

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Prepared on 14 October 2026 · Esheria