

UGANDA / JUDGMENT

In Re: Nalwadda Veronica (minor) (Family Cause 242 of 2014) [2015] UGHCFD 6 (4 March 2015)

[2015] UGHCFD 6

COURT

HC: Family Division (Uganda)

BEFORE

Tuhaise, J

CASE / FILE NUMBER

Family Cause 242 of 2014

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FAMILY DIVISION

FAMILY CAUSE 242 OF 2014

IN THE MATTER OF VERONICA NALWADDA A MINOR

AND

IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP BY NAMBUGU EVA IN RESPECT OF
THE MINOR, VERONICA NALWADDA

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) of the Constitution; section 98 of the Civil Procedure Act cap 71; sections 14, & 33 of the Judicature Act, cap 13; sections 2 & 3 of the Children Act cap 59; and Order 52 rules 1 & 3 of the Civil Procedure Rules SI 71 -1. The applicant is seeking orders that this honourable court be pleased to appoint Ms Nambugu Eva (the applicant) as the guardian of Veronica Nalwadda (the minor); and that this honourable court grants authority to Ms Nambugu Eva to dispose of the property described as Busiro Block 338 Plot 750, for the benefit of the above said minor.

The grounds of the application are that:-

1. The applicant is the biological mother of the minor Veronica Nalwadda and the applicant and her husband Mr. Musoke John Bosco jointly take care of the welfare of the said child.
2. The applicant's husband Mr. Musoke John Bosco does not have any objection to her acquisition of the said Guardianship Order over the minor.
3. It is in the best interests of the welfare of the minor that the applicant be appointed guardian of the said minor and be authorized to dispose of the property described as Busiro Block 338 Plot 750.

The application is supported by the affidavit of the applicant and a supplementary affidavit of her husband John Bosco Musoke. The applicant attended court and was interviewed on oath in addition to her supporting affidavit. The minor, Veronica Nalwadda, the subject of the application, also attended court, and at this court's request, was examined on oath by court after being found to be of understanding age. The father of the minor also appeared in court in addition to his affidavit and consent, both on court record.

The background is that in 2010 the applicant purchased property comprised in Busiro Block 338 Plot 750 land at Kiwatule of which she was jointly registered as proprietor with the minor. The land is to be a subject of compensation by the Uganda National Roads Authority. She seeks this court to declare her legal guardian of the minor and authorize her to sell the land so that she caters for the interests of the minor. Learned Counsel Katamba 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 minor's 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 minor who has always been under her custody jointly with her husband John Bosco Musoke, the minor's biological father. The applicant purchased the land and registered it in her names jointly with that of the minor. The child herself stated to court on oath that the applicant was her biological mother and that she is not opposed to her mother disposing of the land to cater for her interests. Photocopies of the minor's birth certificate and of the certificate of title to the land in question,

the originals of which were seen by court were annexed as A and B respectively to the applicant's affidavit to corroborate this evidence.

In this case, where the applicant, who is minor's biological mother, seeks an order that will enable her to dispose of the child's land which she herself bought, and where the child, who is of understanding age, is not opposed to the sale, and where the biological father, who is also the applicant's husband consents to the application, with both stating 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. The applicant Ms Nambugu Eva is appointed as the guardian of Veronica Nalwadda.
2. The applicant is granted authority to dispose of the property described as Busiro Block 338 Plot 750, for the benefit of the above said minor.
3. Costs of this application will be met by the applicant.

Dated at Kampala this 4th day of March 2015.

Percy Night Tuhaise

Judge.

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