

UGANDA / JUDGMENT

In Re.: Tebulotwa Agnes & Nakubulwa Norah Sebunya (Family Cause 149 of 2016) [2017] UGHCFD 16 (19 December 2017)

[2017] UGHCFD 16

COURT

HC: Family Division (Uganda)

BEFORE

Tuhaise, J

CASE / FILE NUMBER

Family Cause 149 of 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FAMILY DIVISION

FAMILY CAUSE 149 OF 2016

IN THE MATTER OF THE CHILDREN ACT CAP 49

AND

IN THE MATTER OF TEBULOTWA AGNES SEBUNYA AND NAKUBULWA NORAH SEBUNYA

AND

IN THE MATTER OF AN APPLICATION BY NAMAKULA NUR (MOTHER) AND GGAYI BUGEMBE JOHN (UNCLE) TO BE APPOINTED LEGAL GUARDIANS OF TEBULOTWA AGNES SEBUNYA AND NAKUBULWA NORAH SEBUNYA

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; sections 14, 33 & 39 of the Judicature Act, cap 13; and section 3 of the Children Act cap 59. The applicants are seeking orders that this honourable court appoints them legal guardians of Tebulotwa Agnes Sebunya (minor aged 8 years) and Nakubulwa Norah Sebunya (minor aged 5 years); and that costs of the application be provided for.

The grounds of the application are that:-

1. The infants are the issues of Namakula Nur and the late Eriya Sebunya Bugembe.
2. The infants' father died on 17th October 2014.
3. The infants are entitled to a share in the estate of the deceased and are beneficial owners of various properties listed in the application.
4. In order to safeguard their interests, it is necessary to appoint the applicants as legal guardians to act on their behalf.
5. It is for the best interests of the infants.

The application is supported by the affidavits of the two applicants. However, this court was informed by the 1st applicant at the hearing of the application that the 2nd applicant (Ggayi Bugembe John) lost interest in the application. The 1st applicant, who was represented by Learned Counsel Kayemba Ann and Opio Moses, attended court and was interviewed on oath in addition to her supporting affidavit. The minors, Tebulotwa Agnes Sebunya (minor aged 8 years) and Nakubulwa Norah Sebunya (minor aged 5 years), the subjects of the application, also attended court. They were interviewed by court but were not put on oath.

Article 139(1) of the Constitution, read with section 14 of the Judicature Act cap 13, gives 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 1st applicant is the biological mother of the two minors who are under her custody. This is evidenced by their birth certificates annexed as B1 and B2 to the 1st applicant's supporting affidavit and the letter from the Chairman Masanyalaze zone Local Council 1 where the 1st applicant resides with the two infants. The two infants also confirmed to court (not on oath) that the applicant is their biological mother. The two infants are beneficiaries to the estate of their late father Eriya Sebunya Bugembe who, according to the death certificate annexed as C to the 1st applicant's supporting affidavit, died on 17th October 2014.

In this case, where the applicant, who is infants' biological mother, seeks an order to enable her safeguard the said infants' interests in the estate of their late father, such order should be granted as it is for the welfare and best interests of the two infants who at that age have no capacity to make decisions or consent on their own.

I accordingly make the following orders:-

1. The 1st applicant Namakula Nur is appointed legal guardian of Tebulotwa Agnes Sebunya and Nakubulwa Norah Sebunya.
2. Costs of this application will be met by the applicant.

Dated at Kampala this 19th day of December 2017.

Percy Night Tuhaise

Judge.

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