

UGANDA / JUDGMENT

In Re Wanzunula (Miscellaneous Cause No. 13 of 2022) [2023]

UGHCFD 2 (27 January 2023)

[2023] UGHCFD 2

COURT

HC: Family Division (Uganda)

BEFORE

Adonyo, J

CASE / FILE NUMBER

Miscellaneous Cause No. 13 of 2022

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The Republic of Uganda

In The High Court of Uganda Holden at Soroti

Miscellaneous Cause No. 0013 of 2022

In The Matter of the Childrens Act Cap 59

And

In The Matter of Wanzunula Mark (Minor)

And

In The Matter of an Application for A Guardianship Order by Wabomba Teddy Kwaga

Before: <u>Hon. Justice Dr Henry Peter Adonyo</u>

Ruling.

1. The Application:

This is an ex-parte application by way of Notice of Motion under section 3 of the Children's Act, section 98 of the Civil Procedure Act and Order 52 rules 1 & 3 of the Civil Procedure Rules for orders that a guardianship order be issued to Wabomba Teddy Kwaga in respect of Wanzunula Mark a minor and that costs of this application be provided for.

The grounds of this application as set out in the application and supporting affidavit are that the applicant is the biological mother of the Wazunula Mark, a minor.

According to the applicant, she bought land and processed a land title in respect of the said land comprised in FRV Vol. HTQ121

$\$S$

Folio Block (road) 6 Plot 627 at Okodoi Obilai and included her $\overline{\$5}$ children and husband as co-owners.

The applicant now wants to use the land title as security for obtaining a loan, however one of the co-owners, is still a minor and has no capacity to consent to the transaction.

That all her intentions are in the best interest of the minor as the 10 loan is meant to uplift the family business which is the only source of income for the family.

The applicant attached copies of the minor's birth certificate, the certificate of title, her national ID and an LC1 introductory letter to the application.

Counsel for the applicant M/s Isodo & Co. Advocates submitted that it is the position of law that anyone below the age of 18 years is considered a minor and cannot therefore make a binding contractual consent in any undertaking and in a case like this one where the minor has interest in property, it is a legal requirement that before anyone deals in the property/interest of the minor, s/he must first obtain a guardianship order and the court can only grant such an order where it is satisfied that the best interests of the child are central to the application.

Counsel submitted that under paragraphs 8 and 9 of the 25 supporting affidavit, the applicant states that the purpose of the guardianship order is to enable her use the property as security for a loan that will uplift the family business which is the only source of income for the family and if the application is not granted the minor will be negatively impacted as the applicant will not be 30

able to fend for the family.

Counsel additionally submitted that the averments in the $\$S$ applicant's affidavit supported by the annexures thereto have proved to court that it is safe to grant the guardianship order to the applicant.

2. Resolution.

a. The Law: 10

There is no specific law that caters for applications for guardianship of infants and their estates. This means that most applications of this nature invoke court's inherent powers and unlimited original jurisdiction under section 98 of the CPA as well as sections 14 and 33 of the Judicature Act.

Such application in most instances is brought by Notice of motion under the provisions of order 52 rule 1 and 3 of the Civil Procedure Act.

Section 98 of the CPA provides that;

"Nothing in this Act shall be deemed to limit or otherwise 20 affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

Article 139(1) of the Constitution provides;

"The High Court shall, subject to the provisions of this \$25\$ Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law."

Section 14 (1) of the Judicature Act provides; \$\mathsf{S}\$

"The High Court shall, subject to the Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or this Act or any other law."

Section 33 of the Judicature Act provides thus; 10

"The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or 15 matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided."

The position of the law is that when considering issues to deal with 20 children, their welfare is paramount.

Section 3(1) of the Childrens Act provides;

"The welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines any question in respect to the upbringing of a child, the administration of a child's property, or the application of any income arising from that administration."

Article 26 (1) of the Constitution of Uganda provides;

"Every person has a right to own property either individually or in association with others." 30

Section 11(1) (a) of the Contracts Act, 2010) provides; \$\mathsf{S}\$

"A person has capacity to contract where that person is— (a)eighteen years or above;"

Section 1 of the Children Act defines a guardian, as a person having parental responsibility for a child.

Section 1 of the Children Act, further states that "parental responsibility means all rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child."

b. The Evidence:

The applicant furnished evidence by way of a birth certificate that indeed the minor is her biological child. She also furnishes a copy of the land title which indicates that the minor together with his elder siblings and parents are joint proprietors of the land comprised of FRV Vol. 1438 Folio 20 Plot 256, Soroti Block 8 at Owalei Opuyo in Soroti district. (These particulars, however, vary with those in the applicant's affidavit, I do take note of that and consider such variance as an error in drafting by Counsel).

The applicant in her affidavit stated that she desired to get a loan facility to uplift the family business which is their sole source of income.

In the matter of Adriko Reuben (A minor) Misc. Application No. 0008 of 2016, the court stated that;

"...in matters of this nature, where the legal property rights of a child are involved, yet by virtue of his status $\frac{1}{2}$ as a legal incompetent, the child does not have the

$\frac{1}{2}$

capacity to safeguard those rights, courts are expected to exercise a *parens patriae* authority. A judge is required to make an independent assessment of these interests, to prioritize them above the competing interests of adult claimants, and to make orders most likely to safeguard and promote those interest. The Judge acting as a *parens patriae* is responsible for $\frac{1}{2}$ **protecting** the interests of children in matters that **come** before him or her. The Judge is obligated to do what is best for the interest of the child."

The minor in the instant case has no capacity to contract with the land in which he has legal interest and yet his well-being is dependent on the success of the family business.

$\frac{1}{2}$

From the averments made in support of this application by the applicant, I would find that because the family business appears

- to be the only source of livelihood of the family and it caters to the welfare of the minor, the grant of this application would not adversely affect the interest of the minor given that there has been shown good intention that actually the purpose of the intended loan was to boost the business for which the minor is a beneficiary

- as it caters for his welfare, with the intended loan being secured to 25 further boost and secure the same.

Given this very clear purpose of the intend loan, I am persuaded that the granting of this application will not have any adverse effect as to the welfare of the minor but instead the intended loan would actually enhance such interest of the minor. I say this because when one looks at the fact that the purchase of the land in question

and its tilting to include the minor, was an act of benevolence by $\$S$ the applicant, who without any other interest, decided on her own free will to include the minor and the other siblings to the land which she had bought as co-owners.

Such protective act, in my considered view is an indication that the applicant cares for the welfare of the minor and would do 10 nothing which would adversely affect the interest of the minor. This motherly act can only be applauded.

Accordingly, I am persuaded that this application has merits. Therefore, it is granted with the following orders;

- a) Wabomba Teddy Kwaga is hereby appointed the legal guardian of Wanzunula Mark.
- b) The applicant is allowed to mortgage the property comprised FRV Vol. 1438 Folio 20 Plot 256, Soroti Block 8 at Owalei Opuyo in Soroti district and shall ensure prompt payment of the same.
- c) The applicant is directed to ensure that the interests of the minor are always reflected in the loan property documents with the loan properly applied to the sole purpose of improving the said family business which should enhance the welfare of the minor.
- d) The applicant shall ensure prudent application of the loan and regular servicing of the same such that the interest of the minor is not affected by any failure to service the intended loan by the applicant.

\$25\$

- e) The applicant is to lodge in court all documents pertaining to the loan acquisition and its use including yearly audited financials and to continue to do so until the said loan is retired.
- f) The applicant shall bear the costs of this application.
- I so order. \$10\$

Hon. Justice Dr. Henry Peter Adonyo

Judge

\$27th\$ January 2023

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Prepared on 13 October 2026 · Esheria