

UGANDA / JUDGMENT

In the matter of an application for legal guardianship by Kawuma Allen (Miscellaneous Cause 33 of 2020) [2021] UGHCFD 224 (15 March 2021)

[2021] UGHCFD 224

COURT

HC: Family Division (Uganda)

BEFORE

Okalany, J

CASE / FILE NUMBER

Miscellaneous Cause 33 of 2020

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(FAMILY DIVISION)

MISCELLANEOUS CAUSE NO. 0033 OF 2020

IN THE MATTER OF OWORI MALCOM OMBUDO, OWORI MELCHIZEDEK KALENGE AND
CONSTANCE JOYCE MAJERI AKELLO (INFANTS)

AND

IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY KAWUMA ALLEN
(APPLICANT)

BEFORE: HON. JUSTICE SUSAN OKALANY

RULING

INTRODUCTION

1. This is an application brought by way of notice of motion for legal guardianship under Article 139(1) of the 1995 Constitution of the Republic of Uganda, Section 3 of the Children Act, Section 98 of the Civil Procedure Act and Order 5 Rules 1 and 3 of the Civil Procedure Rules. The applicant seeks for the order that:

The Applicant be appointed legal guardian of Owori Malcom Ombudo, Owori Melchizedek Kalenge and Constance Joyce Manjeri Akello in respect of the land and property comprised in Kyaggwe Block 188 Plot 576 at Nakapinyi, in Mukono District.

1. The grounds of the application are set out in the affidavit of the applicant, Kawuma Allen and briefly are that:
2. The children who are minors are the registered proprietors of land comprised in Kyaggwe Block 188 Plot 576 at Nakapinyi;
3. The Applicant wishes to sell, transfer and thereafter purchase another piece of land to build a commercial house and have it registered in the names of the children for their benefit;
4. The Applicant requires an order showing that she has full powers to use the land in the manner aforesaid, for the benefit of the children, which order should include powers to execute all requisite documents that give effect to the guardianship order; and
5. The order if granted shall be for the benefit and welfare of the children.

BACKGROUND

1. According to the applicant in her affidavit in support of the application, she is the biological mother of Owori Malcom Ombudo, Owori Melchizedek Kalenge and Constance Joyce Manjeri Akello, born on 15th August 2009, 14th October 2011 and 26th August 2015 respectively. The minors live under the applicant's care and are her full responsibility in respect of their general welfare, up keep and education.
2. The children are the registered proprietors for the land comprised in Kyaggwe Block 188 Plot 576 at Nakapinyi in Mukono District, which the applicant intends to sell and later purchase another piece of land adjacent to it, which is in a better location than the children's land. She also intends to thereafter construct commercial houses for the children and to register the said piece of land in the children's names, with a purpose of generating income for their education. The applicant additionally states that the land she intends to purchase for the children is more valuable and her actions will in no way compromise the children's welfare; in fact, it will be for their full benefit and welfare as they grow up.

SUBMISSIONS OF COUNSEL

1. The applicant was represented by Mr. Asasira Bosco. Mr. Asasira in his submissions reiterated the contents of the application. He pointed out that the issue for determination is whether the application has been brought in the best interests and welfare of the children.
2. In response, counsel cited **Section 3 and Paragraph 1(b) of the First Schedule to the Children Act**, as well as the case of **In Re Sarah Namakula and Alex Katende Miscellaneous Application No. 92 /93**, which provide that in making any decision concerning a child, his or her welfare is paramount. He observed that in the instant case, the children are the

applicant's own children as per her affidavit. She had purchased the property in issue and caused its registration in the children's names as evidenced by Annexure D. She now intended to sell the said property to acquire a better one and develop it for the benefit of the children. Counsel prayed that this court allows the application.

DECISION OF COURT

1. I have considered the application, the submissions of counsel and the law applicable. I do agree that the main issue for determination in this matter is: **Whether it is in the best interests of the minors that a guardianship order is granted to the applicant in respect of the property in question**.
2. The **United Nations Convention on the Rights of the child** underlines the following principles, as providing guidance on the treatment of Children in all aspects of their lives:
3. Best interest of the child – Article 3;
4. Protection of the right to life, survival and development –Article 6;
5. Right to be heard and respect for the views of the child –Article 12(2); and
6. Non-discrimination -Article 2.
7. **Section 3 of the Children Act Cap 59 as amended**, states that: *“*The welfare of the child shall be of paramount consideration whenever the state, a court, a tribunal, a local authority or any person determines the question in respect to the upbringing of the child, the administration of the child’s property, or the application of any income arising from that administration*”*.
8. In determining the suitability of an applicant to be appointed as guardian for a child, the court is additionally, to be guided by **Section 43F (1)(e) of the Children Act**, which requires that: **A court shall before making a guardianship order, satisfy itself that consideration has been given to the wishes of the child, having regard to the age and understanding of the child, where in the view of the court, the child is able to understand the guardianship proceedings.**
9. It was the applicant’s averment in her affidavit in support of the application that she is the biological mother of the children Owori Malcom Ombudo, Owori Melchizedek Kalenge and Constance Joyce Manjeri Akello. She produced copies of the children’s immunization cards and provisional birth certificates, attached as Annexures A, B and C respectively, as proof of the fact that the children are her children. The applicant further averred that the piece of land comprised in Kyaggwe Block 188 Plot 576, at Nakapinyi – Mukono, is registered in the names of the children Owori Malcom Ombudo, Owori Melchizedek Kalenge and Constance Joyce Manjeri Akello. A copy of the certificate of title of the said land was attached to the applicant’s affidavit as Annexure D.

10. At the hearing of this application, I examined the children, to ascertain their views and feelings on the matter. Owori Malcom Ombudo stated that he was 11 years old at the time of hearing of this application. He mentioned that the applicant is his mother, while his father Owori Davis Jeremiah Okoth is a chef who works in the USA. It was his statement that his family lives in Namuwongo – Kisugu in Kampala. He and his brother Melchizedek Owori Kalenge attend school at Mirembe Junior School, studying in primary 5 and 3 respectively, while his sister Constance Joyce Manjeri Akello goes to Queen Ann Nursery School and is in top class. His mother is a teacher in Queen Ann Nursery and Primary school. He stopped going to school last year because of the coronavirus pandemic. It was his testimony that his family's origin is Tororo District, in a place called Kidera. That his family lives together with their grandfather Owori Kalenge Ombudo, aunt Owori Dora and uncle Owori Jacob.
11. The testimonies of Owori Melchizedek Kalenge (9 years) and Constance Joyce Manjeri Akello (5 years) are similar in effect to what Owori Malcom Ombudo stated in court.
12. None of the children knew why they were in court or who owns the land comprised in Kyaggwe Block 188 Plot 576. Their wishes in that regard thus, could not be established. However, from my examination and observation of the children during the hearing of the application, I concluded that the applicant has so far, acted in the best interest of the children; protected their right to life, survival and development, since the said children are not only physically and emotionally healthy, but were progressing well with their education before the COVID19 pandemic. Their right to be heard and respect for their views is apparently being respected too, since they spoke freely with me, answering my questions accurately and without exhibiting any fear, their tender age notwithstanding.
13. I thus believe that the intentions of the applicant in selling the land comprised in Kyaggwe Block 188 Plot 576 at Nakapinyi, in Mukono District, registered in the names of the children and in purchasing another piece of land in order to construct a commercial house for the children thereon, is in the best interest of the children, as the applicant intends to apply the proceeds from the commercial house for the welfare of the children. I find that appointing the applicant, as legal guardian of the children, to enable her sell the land comprised in Kyaggwe Block 188 Plot 576 at Nakapinyi - Mukono District, on their behalf, will not prejudice their best interests, but will in fact promote their physical, emotional, and educational needs. It is my considered opinion therefore that this application was brought with the best interests of the children in mind.
14. In the result, I allow it and order as follows:
15. The Applicant is appointed legal guardian of Owori Malcom Ombudo, Owori Melchizedek Kalenge and Constance Joyce Manjeri Akello in respect of land comprised in Kyaggwe Block 188, Plot 576 at Nakapinyi, in Mukono District, for purposes of assigning, transferring, selling or transacting in any way, for and on behalf of the children; and
16. No order is made as to costs.

I so order.

Susan Okalany

JUDGE

15th March, 2021

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