

UGANDA / JUDGMENT

Re: David Mark Kabwigu Kirunda (Family Cause No. 120 of 2009) (Family Cause No. 120 of 2009) [2009] UGHC 72 (21 October 2009)

[2009] UGHC 72

COURT

High Court of Uganda

CASE / FILE NUMBER

Family Cause No. 120 of 2009

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\par }{\b\f0\fs24\insrsid15230489\charrsid13654686 IN THE HIGH COURT OF UGANDA HOLDEN
AT KAMPALA

\par FAMILY CAUSE NO. 120 OF 2009

\par IN THE MATTER OF DAVID MARK KABWIGU KIRUNDA

\par AND

\par IN THE MATTER OF AN APPLICATION FOR LEGAL GUARDIANSHIP BY DA}
{\b\f0\fs24\insrsid16195784\charrsid13654686 NIEL}{\b\f0\fs24\insrsid15230489\charrsid13654686
KIRUNDA MISANGO.

\par BEFORE: }{\b\f0\fs24\ul\insrsid15230489\charrsid13654686 HON. }
{\b\f0\fs24\ul\insrsid16013918\charrsid13654686 LADY JUSTICE}
{\b\f0\fs24\ul\insrsid15230489\charrsid13654686 MARGARET C. OGULI OUMO

\par RULING

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otion under section 98 of the Civil Procedure Act, }{\f0\fs24\insrsid2907333\charrsid13654686 O}{
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\f0\fs24\insrsid16013918\charrsid13654686 SI}{\f0\fs24\insrsid15230489\charrsid13654686 71-1 , in
which the applicant is seeking for the following orders:-

\par }{\f0\fs24\insrsid2907333\charrsid13654686 That the applicant be appointed legal guardians
of the child David Mark Kabwigu Kirunda}{\f0\fs24\insrsid16195784\charrsid13654686 .}
{\f0\fs24\insrsid2907333\charrsid13654686

\par }{\f0\fs24\insrsid16195784\charrsid13654686 At the hearing of the application, the appli}
{\f0\fs24\insrsid405765\charrsid13654686 cant was represented by Mr. Twinomugisha Nathan.}
{\f0\fs24\insrsid16195784\charrsid13654686

\par The grounds of the application are as follows:-

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\f36\fs22\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
\f0\fs24\insrsid16195784\charrsid13654686 That the child is aged 15 years of age and therefore
still a minor.

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\hich\af0\dbch\af0\loch\f0 2.\tab}That the child is the biological son of the applicant.

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That the child is one of the registered proprietors of the land described as Plot No. 6, Block No
184 Kyaggwe.

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d together with the rest of the registered proprietors of the above mentioned land wishe to sell
the land.

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\lang1033\langfe1033\dbch\af0\langnp1033\langfenp1033\insrsid16195784\charrsid13654686
\hich\af0\dbch\af0\loch\f0 5.\tab}That owing to the child\quote

s age, he cannot enter into any contract legally except through a legal guardian.

\par {\listtext\pard\plain\s15
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\hich\af0\dbch\af0\loch\f0 6.\tab}That }{\f0\fs24\insrsid13568232\charrsid13654686 it }
\f0\fs24\insrsid16195784\charrsid13654686

is in the best interest of the child that the }{\f0\fs24\insrsid5206706\charrsid13654686 land
aforementioned be sold in order to provide for the said child.

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\lang1033\langfe1033\dbch\af0\langnp1033\langfenp1033\insrsid5206706\charrsid13654686
\hich\af0\dbch\af0\loch\f0 7.\tab}That it is in the best interest of the child that the }
\f0\fs24\insrsid5844951\charrsid13654686 applicant}{

\f0\fs24\insrsid5206706\charrsid13654686 be }{\f0\fs24\insrsid5844951\charrsid13654686 granted}
\f0\fs24\insrsid5206706\charrsid13654686 legal guardianship so tha}
\f0\fs24\insrsid5844951\charrsid13654686 t}{\f0\fs24\insrsid5206706\charrsid13654686

the guardian can enter into contract with an intending purchaser for the land.

At the hearing of the application, the respondent applicant was represented by Mr. Twinomugisha Nathan.

The High court has original jurisdiction in all matters. See: Article 139 of the Constitution of Uganda, 1995.

See: Section 14 of the Judicature Act.

The High Court has powers to grant remedies absolutely or on such terms as it thinks fit.

See: Section 33 of the Judicature Act.

See: Section 98 of the Civil Procedure Act.

A child has been defined as any person below 18 years.

See section 2 of the children's Act.

The child here is 15 years of age as evidenced by his birth certificate on the court file.

\par The child here is }{\f0\fs24\insrsid10422067\charrsid13654686 one of }
 {\f0\fs24\insrsid1851492\charrsid13654686 the registered proprietor}
 {\f0\fs24\insrsid10422067\charrsid13654686 s of land in B}
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\f0\fs24\insrsid10422067\charrsid13654686 ,}{\f0\fs24\insrsid1851492\charrsid13654686 plot 6, }
 {\f0\fs24\insrsid10422067\charrsid13654686 land at Buligobe. S}
 {\f0\fs24\insrsid1851492\charrsid13654686 ee copy of the title deed on the court file.

\par }{\f0\fs24\insrsid10422067\charrsid13654686

\par }{\f0\fs24\insrsid1851492\charrsid13654686 In making any decision concerning a child, the
 welfare of the child is of paramount importance.}{\f0\fs24\insrsid7737689\charrsid13654686

\par }{\b\f0\fs24\ul\insrsid1851492\charrsid13654686 See}
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 Sect}{\b\f0\fs24\ul\insrsid10422067\charrsid13654686 ion 3 and }{

\b\f0\fs24\ul\insrsid1851492\charrsid13654686 para}
 {\b\f0\fs24\ul\insrsid10422067\charrsid13654686 graph}
 {\b\f0\fs24\ul\insrsid1851492\charrsid13654686 1(b) of the }
 {\b\f0\fs24\ul\insrsid10422067\charrsid13654686 first Schedule of the Children}{

\b\f0\fs24\ul\insrsid1851492\charrsid13654686 Act, Cap 59.

\par }{\f0\fs24\insrsid1851492\charrsid13654686

\par The High Court has on many cases granted guardianship to the parents in similar cases
 namely}{\f0\fs24\insrsid2829922\charrsid13654686 ; }
 {\f0\fs24\ul\insrsid10422067\charrsid13654686

In Re: An Application for Guardianship of Duncan Mugero Wampande and Martha Mugero}
 {\f0\fs24\ul\insrsid2829922\charrsid13654686 }{\f0\fs24\ul\insrsid290860\charrsid13654686 N}
 {\f0\fs24\ul\insrsid2829922\charrsid13654686 abirye (min){

\f0\fs24\ul\insrsid290860\charrsid13654686 ors) by Mugero Christopher (}
 {\f0\fs24\ul\insrsid2829922\charrsid13654686 Family Cause No 50 of 2006}
 {\f0\fs24\ul\insrsid290860\charrsid13654686)}{\f0\fs24\ul\insrsid2829922\charrsid13654686 [2005]
 UGHC

34(22 November 2005)){\f0\fs24\insrsid2829922\charrsid13654686 in which J Mwangusya held
 that }{\b\f0\fs24\insrsid2829922\charrsid13654686 '\93 }{\i\f0\fs24\insrsid2829922\charrsid13654686

the purpose of the application for guardianship orders is to get ac}
 {\i\f0\fs24\insrsid290860\charrsid13654686 cess to some money left in trust}
 {\i\f0\fs24\insrsid2829922\charrsid13654686

for the infants so that he can use it for their maintenance. That the money was left by their mother who was taking care of them and his access to the fund}

{\i\fs24\insrsid290860\charrsid13654686 s}{\i\fs24\insrsid2829922\charrsid13654686

will ena}{\i\fs24\insrsid11011211\charrsid13654686 ble him cater for their interest;}{\fs24\insrsid290860\charrsid13654686 \94 }{\fs24\insrsid11011211\charrsid13654686

\par }{\fs24\insrsid290860\charrsid13654686 and in the case of }

{\fs24\ul\insrsid290860\charrsid13654686 In Re: T}{\fs24\ul\insrsid2829922\charrsid13654686 he children\quote s Act cap 59; }{\fs24\ul\insrsid290860\charrsid13654686 In Re: An A}{

\fs24\ul\insrsid2829922\charrsid13654686 pplication for }

{\fs24\ul\insrsid290860\charrsid13654686 a G}{\fs24\ul\insrsid2829922\charrsid13654686 uardianship Order by As}{\fs24\ul\insrsid290860\charrsid13654686 i}{

\fs24\ul\insrsid2829922\charrsid13654686 imwe Adidas}

{\fs24\ul\insrsid5915176\charrsid13654686 (father)}

{\fs24\ul\insrsid290860\charrsid13654686 ;}{\fs24\ul\insrsid5915176\charrsid13654686 In Re: Asiba Junior, Kobusingye, Syl}{

\fs24\ul\insrsid290860\charrsid13654686 i}{\fs24\ul\insrsid5915176\charrsid13654686 via, Katusi}{\fs24\ul\insrsid290860\charrsid13654686 ime Lilia}

{\fs24\ul\insrsid5915176\charrsid13654686 n, }{\fs24\ul\insrsid290860\charrsid13654686 Bih}{

\fs24\ul\insrsid10840693\charrsid13654686 emaiso isingoma and }

{\fs24\ul\insrsid6626427\charrsid13654686 B}{\fs24\ul\insrsid290860\charrsid13654686 aguma Keith, (Family Cause No. 0){\fs24\ul\insrsid10840693\charrsid13654686

29 of 2006) [2006] UGHC 12[19 April 2006), }{\fs24\insrsid10840693\charrsid13654686 in which J. Mwangusya in an application where a father was applying for legal guardianship of his two children who were registered proprietors of land, held that; }

\i\fs24\insrsid10840693\charrsid13654686 the applicants and the minors are registered as joint tenants}{\i\fs24\insrsid290860\charrsid13654686 on registered land in LRV volume 306}{\i\fs24\insrsid10498379\charrsid13654686 0, }

\i\fs24\insrsid290860\charrsid13654686 Folio 15 land described}

{\i\fs24\insrsid11011211\charrsid13654686 as plot 17, Ma}

{\i\fs24\insrsid10498379\charrsid13654686 gungu }{\i\fs24\insrsid11011211\charrsid13654686 Lake }

\i\fs24\insrsid10498379\charrsid13654686 Masindi town. A}

{\i\fs24\insrsid11011211\charrsid13654686 s a result of the applicants\quote failure}

{\i\fs24\insrsid10498379\charrsid13654686 to raise school fees so that the}{

\i\fs24\insrsid11011211\charrsid13654686 se}{\i\fs24\insrsid10498379\charrsid13654686 minors}{\i\fs24\insrsid11011211\charrsid13654686

, he intends to mortgage the property so that he obtain funds for investment for the purpose of raising school fees so that the minors

can further their education. He cannot deal in this property unless he has got a guardianship order for the other joint tenants who are all minors

That the guiding principle in applications of such nature under S.3 of the Children Act

is the welfare of the children.

That this children need education and it is in their interest

that their father raised funds to cater for their education and other needs. And In Re

: An application for Legal Guardianship of Minors by Margaret Kamuzan

a & In Re: Bulemez i Block 160 Plot 162, Land at Lutamu

B (Family Cause No. 39 of 2006) [2006] UGHC.63 27 April 2006

J. Remmy Kasule held that the applicant is seeking the guardianship for the welfare of the minors and as the appointed guardian, the applicant

was authorized to mortgage, transfer, tender as security and to deal in any way whatsoever she deemed appropriate in the land comprised in Bulemezi Block 1

\i\fs24\insrsid15611885\charrsid13654686 60 Plot 162 at Lutamu}
 {\i\fs24\insrsid1835885\charrsid13654686 , registered in the names of the minors.}
 {\i\fs24\insrsid10498379\charrsid13654686

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\par In the instant case, counsel for th

e applicant, Mr. Twinomugisha submitted that the applicant seeks to be appointed legal guardian of his son David Mark Kabwigu Kirunda. That the applicant is the father of the child who is a minor of 15 years. Mr. Twinomugisha contended that the child is

the registered proprietor of land comprised in Plot 6, block 164 }
 {\fs24\insrsid7617128\charrsid13654686 K}{\fs24\insrsid1835885\charrsid13654686 yaggwe together with his {\fs24\insrsid7617128\charrsid13654686 siblings.}{

\fs24\insrsid1835885\charrsid13654686 }{\fs24\insrsid7617128\charrsid13654686 Mr.}
 {\fs24\insrsid1835885\charrsid13654686 Twinomugisha argued that the applicant is }
 {\fs24\insrsid7617128\charrsid13654686 desirous}{

\fs24\insrsid1835885\charrsid13654686 of obtaining the orders so that he can legally sell part of the land in order to raise fees for the {\fs24\insrsid7617128\charrsid13654686

infant who is a student at Vienna International School in senior four. That is it in the best interests of the infant since he has looked after the infant since he was born. That the court be pleased to grant the order, so that the applicant as a guardi

an can raise fees for the infant to continue with his}{\fs24\insrsid13858172\charrsid13654686 education.}{\fs24\insrsid1835885\charrsid13654686

\par }{\fs24\insrsid13858172\charrsid13654686 In view of the above, court is satisfied that the child is the registered proprietor of the land in issue as per the copy of the title deed on the court file; that the child is a minor and ca

not legally transact any business with the property. That the application is for the best interests of the child as the funds are to enable the applicant raise school fees for his son\quote s education.

\par Court is also satisfied that the applicant has no interest which is adverse or prejudicial}
 {\fs24\insrsid15088651\charrsid13654686 to that of the infant.

\par Consequently, the application is allowed in the following terms and conditions:-

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The applicant is appointed the legal guardians of his son David Mark kabwigu Kirunda}
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 \hich\af0\dbch\af0\loch\f0 2.\tab}}{\f0\fs24\insrsid15088651\charrsid13654686 The applicant is
 particularly }{

\f0\fs24\insrsid9526544\charrsid13654686 authorized}{\f0\fs24\insrsid15088651\charrsid13654686
 to transfer part of the land comprised in Plot 6, Block}
 {\f0\fs24\insrsid13858172\charrsid13654686 }{\f0\fs24\insrsid9526544\charrsid13654686

184 Kyagwe, registered in the names of the minor and his 2 siblings.

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 \hich\af0\dbch\af0\loch\f0 3.\tab}The court makes no order as to costs.

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\par Judge

\par }{\b\caps\f0\fs24\insrsid2583311\charrsid13654686 21-10-2009.

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 \f36\fs22\lang1033\langfe1033\cgrid\langnp1033\langfenp1033
 {\f0\fs24\insrsid16713141\charrsid13654686 Mr. Twinomugisha Nathan-Counsel for the
 applicants.

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\hich\af0\dbch\af0\loch\f0 2.\tab}Nalongo Nadaula-Court Clerk

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\hich\af0\dbch\af0\loch\f0 3.\tab}Nyakwebara Elizabeth-Research Assistant.

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Prepared on 14 October 2026 · Esheria