

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
FAMILY AND CHILDREN CAUSE No. 0004 OF 2017**

IN THE MATTER OF THE MATTER OF THE CHILDREN ACT, CAP 59

AND

**IN THE MATTER OF AN APPLICATION FOR }
GUARDIANSHIP BY WANDERA PETER }..... APPLICANT**

Before: Hon Justice Stephen Mubiru.

RULING

This is an ex-parte application for Legal Guardianship of a four year old girl-child, made by her biological father, Mr. Wandera Peter. The application is made by way of notice on motion pursuant to Article 139 (1) of *The Constitution of the Republic of Uganda*, 1995; section 39 (2) of *The Judicature Act*, sections 3, 4 and 5 of *The Children Act*; section 98 of *The Civil Procedure Act*, and order 52 rules 1 and 2 of *The Civil procedure Rules*.

In the affidavit supporting the application, the applicant avers that he is ordinarily resident within Arua Municipality where he is employed in the service of "Face Technology" as a validation Officer at its Arua Regional Office. He is married to a one Ninsiima Roserine, with whom they solemnised their marriage at Rugarama Church of Uganda in Ntungamo District on 11th May 2013. Copies of the marriage certificate and the birth certificate of the child are attached to the application. They have since become the biological parents of Aidah Annette Nabwire, a girl now aged four years old, and three other children aged 9 years, 6 years and 3 years respectively.

The child, Aidah Annette Nabwire, is the registered proprietor of land comprised in Kyaggwe Block 169 Plot 913, being 0.051 hectares of land situated at Mutuba Ward, Nnnama, Gulu-Mukono. They have developed the land by construction of rental buildings thereon, to which they desire to have utility supplies extended and connected but have been advised by the utility

service providers that this cannot be done until the property is registered in their names or upon appointment of the applicant as guardian of the registered proprietor, hence this application.

When he appeared *pro se*, to present his application, the applicant stated that he seeks the grant in order to administer that land registered in his daughter's names and that he will require the grant for future purposes in the event that he needs to use the title as collateral for funds to cater for the child's welfare. He stated further that he is aware that he cannot dispose of the property without an order of court but only intends to develop the land for the benefit of the child.

I note that the property sought to be administered by the applicant is situated in a different circuit of the High Court while the applicant is ordinarily resident within this circuit. An application for guardianship of this nature may be made in either circuit. Since the applicant and the child are residents of and are physically present within the geographical jurisdiction of this High Court Circuit, requiring them to transfer the application to the Mukono High Court Circuit where the property is said to be situated would be subjecting them to unnecessary expense in a proceeding which is already pending before this court.

A guardian is a person who is given the legal power to make decisions for another person because he or she is considered not competent to decide for himself / herself. Guardianship is thus a legal relationship between a competent adult (the guardian) and a person who because of incapacity, such as minority, is incapable of taking care of his or her own affairs (the ward). The guardian makes decisions on behalf of the ward. The guardian, by virtue of that status, is authorised to make legal, financial, shelter, education, food and health care decisions for the ward, but may be required to seek court approval for various decisions, especially those regarding the investment and disposal of the property of the ward. A guardian must always act in the best interest of the ward. In such cases, the guardian will manage the ward's finances and property and provide records to the court. The guardian acts as the legal parent of the ward for the entirety of the guardianship. Although the guardian has the same responsibilities to care for the child as a parent would, a guardianship does not sever the legal relationship that exists between a child and his or her biological parents. Instead, it co-exists with that legal relationship.

That means the guardian takes full legal and physical custody of the child and can make all the decisions about the physical care of the child that a parent would make. A guardian can be anyone: parents, relatives, friends of the family, or other people suitable to raise the child. Without limiting the parental rights of parents as the natural guardians of their children, no person, whether a parent or otherwise, has any power as a legal guardian, except on appointment by a court. Because guardianship creates a legal relationship conferring upon the guardian some say in the child's future, for an applicant to qualify as a guardian, he or she must be an adult of sound mind, should have a genuine interest in the child's welfare, there must not exist any conflict of interest between the applicant and the child, the applicant must physically be able to fulfil the responsibilities, must be able to handle the physical demands of raising a child, must have enough time to care for the child, must not be likely to exploit or abuse the child, must be able to afford to raise the child, either through his or her own income or through assets left for the care of the child and shares the basic known values and morals of the child, such as religion, or should have values or morals the court would feel comfortable being instilled the child, while bearing in mind that "society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done" see (*Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050).

In the determination of suitability of an applicant for guardianship of a child, Court is guided by sections 3 and 4 of *The Children Act* that require it to be guided by the welfare principle and best interest of the child. In applying that principle, the court will consider the relationship between the child and potential legal guardian, whether the applicant is the child's preference, whether the applicant is in position to provide the best stability and continuous care for the child, he or she can best fulfil the child's needs, the moral character, fitness, and conduct of the potential guardian. The court will look at what is in the best interest of the child to make sure the child is raised in a safe, stable, and loving environment. A legal guardian can care for a child when the

parents are unable to. A guardianship order ought to be motivated by the overriding requirements pertaining to the child's best interests.

An applicant for legal guardianship may show that he or she is the best suited to care for the child by establishing that he or she is ready and willing to carry out the parental responsibilities for the child. In the instant application, the is the biological father of the child, has custody of the child and has been catering for her needs such as feeding, shelter, education and medical care. He already has three other children and appears to have coped well this far with the pressures of caring for the child in respect of whom he has presented this application. Parents are the natural guardians of the persons of their minor children, and they ordinarily have the right to their custody, control, care, services and earnings, and it is their duty to support and educate them. In order to deny or deprive a parent legal guardianship of his or her minor child, the evidence must clearly establish the unfitness of the parent to have such custody and that the welfare of the child requires that the parent be denied or deprived of such guardianship.

However, since the child has real property in her name, the guardianship in this instance will involve management of the child's property. For that reason the applicant must meet additional requirements, viz.:- he should be capable of taking control over the child's real and personal estate, and make decisions in the best interests of the child. His interests should not be adverse to those of the child, in the estate for which he proposes to act as manager. He should be able to keep safely the property of the child. He must be capable of not permitting any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the court, but must so far as it is in his power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the child or the successors of the child at the close of his guardianship, in as good condition as he received it.

I have considered the material before me and have had the opportunity to see the child, the subject of this application but found her too young for her ascertainable wishes and feelings to be relevant. I have found that there does not exist any obvious conflict of interest between the applicant and the child. The applicant has already demonstrated by caring for her that he is capable of putting her needs before his own needs. I find that the applicant is an adult of sound

mind, and has a genuine interest in his child's welfare, he is physically able to fulfil the responsibilities of a guardian, will be able to handle the physical demands of raising her, has enough time to care for the child, is not likely to exploit or abuse her and is able to afford to raise her through his own income.

I have considered the fact that he is the biological father of the child and that he now cares for her and the child is entirely dependent on the applicant in all her humanly needs. I am unable to find any adverse interests between the applicant and the child. I have no reason to doubt the applicant's ability to prevent the potential abuse, neglect and exploitation of the child, to take control over her real and personal estate, her personal welfare, and to make decisions in the best interests of the child. I accordingly hereby appoint Mr. Wandera Peter, ordinarily resident in Arua Municipality as well as in Guru Ward, Central Division, Mukono Municipality, as the legal guardian of his biological daughter, Aidah Annette Nabwire, of the same address.

Furthermore, except as otherwise provided by law, the court is further empowered to make such orders as it may think fit for the management of the estate of the child. The guardian shall, before entering upon his duties as guardian, execute and file in this guardianship proceeding a non-cash bond, without sureties, which court has in the circumstances of this application considered necessary for the protection of the child and the estate of the child, conditioned upon the faithful discharge by the guardian of his authority and duties according to law. The bond is in essence security given by the manager for due administration of the child's estate. The applicant should, in the circumstances execute a non-cash bond of Uganda shillings 5,000,000/= (five million) for the due administration of the child's estate. This bond will be without sureties. By that bond, the applicant shall undertake to act as a fiduciary and to perform, diligently and in good faith, as a prudent person would in managing his own property, not with regard to speculation but with regard to conservation and growth, and the specific duties and powers assigned by the court.

Lastly, in the execution of his obligations, the applicant shall not without special, express permission of court, mortgage, charge, or transfer by sale, gift, surrender, exchange or otherwise, any immovable property of the child, or lease any such property for a term exceeding 5 years or invest any funds belonging to the estate of which he is manager in any company or undertaking

in which he himself has a direct personal interest, nor purchase immovable property out of the property of the child, without the prior express consent of the court. The applicant shall meet the costs of this application.

Dated at Arua this 28th day of November, 2017.

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Stephen Mubiru

Judge

28th November, 2017