

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT LIRA
IN THE MATTER OF THE CHILDRENS ACT CAP 59 AS
AMENDED

AND

IN THE MATTER OF AWANIA MARIAM GABRIELLA (INFANT)
OF BARONGER VILLAGE, ALITO CAMP PARISH, LIRA CITY
WEST DIVISION, LIRA CITY

AND

IN THE MATTER OF A PETITION FOR LEGAL GUARDIANSHIP
BY ACOMO ROSE

PETITION NO. 08 OF 2023

BEFORE: HON. JUSTICE DUNCAN GASWAGA

RULING

- [1] The petitioner brought this application for legal guardianship of Awania Mariam Gabriella, aged 4 years under Section 43B of the Children Act as amended for orders that; *the order for guardianship of the child Awania Mariam Gabriella be granted; the petitioner meets the costs of the petition and such other orders be made as the nature of the case may require.*
- [2] The grounds of this petition are that; *the petitioner is related to the child as a grandmother and there is no other relative willing to take care of her and perform parental responsibility; the petitioner is single and a reputable woman who loves the child and wants to obtain a legal bond between her and the child and provide for the welfare of the said child; the petitioner does not have any criminal record in Uganda or any other country; the petitioner has attached a recommendation letter concerning her suitability from the probation and social*

welfare officer; the child was born and abandoned by her mother to her grandfather who has no capacity to take care of her and thus requested the petitioner to take on the responsibility; the whereabouts of the father and mother are unknown; the petitioner undertakes to support and care for Awania Mariam Gabriella as though she were her own child and that the petitioner has not received or agreed to receive any payment or consideration of the guardianship order.

[3] This application raises two issues to wit;

- 1. Whether the petitioner is suitable to be appointed a legal guardian?**
- 2. Whether it is in the interest of the child that the applicant be granted a guardianship order?**

Issue 1: Whether the petitioner is suitable to be appointed a legal guardian?

[4] It was submitted for the petitioner that her credentials and financial status make her suitable to be appointed legal guardian of the child. Counsel relied on **Section 43F of the Children Act as amended** and **Deborah Joyce & Richard Masaba, Civil Appeal No.70 & 81/2011** to further state that the petitioner is a transporter with New Vision Printing and Publication Ltd with the capacity to provide and care for the child's welfare. Further, that the suitability of the petitioner has been confirmed by the Probation and Social Welfare Officer. It was also submitted that the petitioner has no criminal record and has as well obtained consent from the

child's guardian and with all these, the petitioner meets the requirements for legal guardianship.

[5] **Section 43A (2) of the Children Act Cap 59** as amended is to the effect that *"a person who is not a citizen of Uganda shall not be eligible to apply for legal guardianship."* Further, **Section 43B** thereof states that; *"application for legal guardianship of a child may be made by any person who is above the age of eighteen, shall be made to the High Court; shall be by petition in the form set out in the third schedule and shall be accompanied by a report of the probation and social welfare officer."*

[6] **Section 43F of the Children Act, Cap 59** as amended provides that;

"The Court shall before making a guardianship order satisfy itself that-

(a) there is no known relative or next of kin of the child;

(b) the relative or next of kin are unwilling or unable to take parental responsibility of the child;

(c) all alternative care options available to the child have been exhausted;

(d) the child is suffering or likely to suffer significant harm under present custody;

(e) 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; and

(f) where the child is twelve years of age or above, his or her consent to the guardianship has been obtained,

unless it is impossible for the child to express his or her consent.

- [7] From the above discourse, I find that the petitioner fulfils the requirements for grant of a guardianship order as she is an adult Ugandan of eighteen years and above. It is further important to note that the known relative of the minor is unwilling to take care of her having abandoned her shortly after birth and disappeared. It was also brought to the attention of the Court that the grandfather to whom she was abandoned is unable to take care of her. On the other hand, the petitioner has shown and exhibited a readiness and willingness to take on the parental responsibility concerning the minor, which responsibility she has already been doing. Judging from the bond that is shared between the petitioner and the minor as viewed by the court when the two appeared for the hearing of this petition as well as the surrounding circumstances as gathered from the evidence on record, I find that the petitioner fulfils all the requirements to be granted the guardianship of this minor.

Issue 2 Whether it is in the interest of the child that the applicant be granted a guardianship order?

- [8] It was submitted that it is in the best interests of the child for this application to be allowed. That in all applications concerning children, the paramount principle considered is that of the best interests of the child as per **Article 34 of the Constitution of the Republic of Uganda, 1995**, the

Children Act and the relevant International Instruments. That as per **Section 3 of the Children Act**, read together with the **3rd schedule to the Act** the following criteria ought to be followed;

“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 likely effects of any changes in the child’s circumstances; the child’s age, background and other circumstances relevant in the matter; any harm that the child has suffered or is at the risk of suffering; and, where relevant, the capacity of the child’s parents, guardians or others involved in meeting his or her needs.”

- [9] That in these particular circumstances, the child was abandoned to her grandfather by her mother while she was 2 months old, which grandfather is unable and unwilling to take care of her and the petitioner has been taking care of her. That there is no relative willing to take on the responsibility of taking care of Awania Mariam Gabriella yet her grandfather also doesn’t have the means to take care of her as such denying this petition would be denying the child a chance to be brought up in a home and an environment where she can be loved and parented. The petitioner prayed that this application be granted.
- [10] According to **Section 3(1) of the Children Act Cap 59** as amended,

(1) 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.

[11] In **J Vs C (1970) AC 668** it was held that;

"when all relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interest of the child....."

[12] In the case of **Gabriel Kangwagye Vs Kate Kangwagye, H.C.M.A No.142 of 1993** the same principle was stated though differently in the following terms;

"The paramount consideration is the interest and welfare of the infants. The court has to look at the particulars of each case and decide whether the infant stands to benefit from the guardianship....."


[13] The unique circumstances of the minor who is the subject of this guardianship application have been put into consideration. The minor, **Awania Mariam Gabriella** was abandoned by her mother when she was only two years old. The grandfather she was left with was unable to take care of her. This alone undermines the very important right of the child to have parents or guardians and thus compromises her interests. Taking into account the availability and suitability of the petitioner to offer guardianship to the minor, and the bond already established between the minor and the applicant, I find that it is in the best interests of the child for this guardianship order to be granted.

[14] The applicant having shown suitability and willingness to offer the required parental responsibility to the child herein, I accordingly allow the application with the following orders;

- a. that the petitioner, Acomo Rose, be and is hereby granted an order of guardianship in respect of the child Awania Mariam Gabriella.
- b. that the petitioner shall have exclusive care, custody and control of the child, Awania Mariam Gabriella, free from the claims, or hindrances of all others, and shall be held responsible for her maintenance, education and support until the child attains the age of eighteen years.
- c. that the petitioner shall register the order herein with the Uganda Registration Services Bureau within fourteen days from the date herein.
- d. That the costs of this application shall be borne by the petitioner

I so order

Dated, signed and delivered at Lira this 10th day of July,
2023



Duncan Gaswaga

JUDGE