

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(FAMILY DIVISION)**  
**FAMILY CAUSE NO. 70 OF 2023**  
**IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP**  
**ORDER**

**AND**

**IN THE MATTER OF ADRILE ABEL PARIYO, AMABE JONATHAN  
PARIYO AND ASITERU PATRICIA (MINORS) OF NAKWERO B  
VILLAGE, KIRA MUNICIPALITY, WAKISO DISTRICT.**

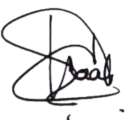
**AND**

**IN THE MATTER OF THE GUARDIANSHIP APPLICATION BY  
CANDIRU JUDITH (MOTHER) FOR APPOINTMENT AS A LEGAL  
GUARDIAN OF THE CHILDREN.**

**RULING BY HON. LADY JUSTICE CELIA NAGAWA**

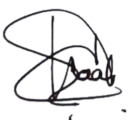
**1. Introduction.**

- 1.1. This ruling relates to an application filed by Notice of Motion in this Court by the Applicant Ms. Candiru Judith under Section 98 of the Civil Procedure Act, Cap. 71, Section 3, 4, 5, 6 and 43A of the Children's Act, Cap. 59 and Section 1(g)(ja), 25 (1) (a) of the Succession (Amendment) Act, 2022 and Article 34(1) and 139 (1) of the Constitution of the Republic of Uganda, 1995.
- 1.2. The Orders sought are that;
  - i. A legal guardianship order be granted to the applicant authorising and/or permitting her to have lawful custody and care of the minor aforementioned.



- ii. The applicant be allowed to withdraw the caveat that was lodged on the land comprised in Kyadondo Block 167 Plot 6272 at Kiwale and have the minors registered on the same as co-proprietors.
  - iii. The costs to be met by the applicant.
- 1.3 The grounds for this application are briefly that;
- a) The applicant is the biological mother of the children Adrile Abel Pariyo aged 16 years, Amabe Jonathan Pariyo aged 13 years and Asiteru Patricia aged 7 years and their father is the late Pariyo Anthony (deceased).
  - b) Since birth, the minors have been under the care of the applicant and her late husband the father to the minors PARIYO ANTHONY who died on 21<sup>st</sup> January, 2018.
  - c) Some unknown person to the applicant lodged a caveat on the land comprised in Kyadondo Block 167 Plot 6272 at Kiwale on
  - d) The applicant is the administrator of the estate of the late Pariyo Anthony and wishes to administer the same.
  - e) The applicant is a person of good moral character with unbeatable passionate love for the said minors and wishes to register then on the said land as co-proprietors.
  - f) It would be in the interest of justice, in line with the law and in the best interest and welfare of the behalf of Adrile Abel Pariyo and Amabe Jonathan Pariyo.

This application is *exparte*.



- 1.4** At the hearing, the Applicant was represented by Ms. Nankya Sumaya from Muslim Centre For Justice and Law. The Applicant and one of the minors were present in Court.
- 1.5 The Learned Counsel for the Applicant submitted orally in resolution of this application in favour of her client, the applicant. I have carefully perused the pleadings and accompanying affidavit and I have considered the submissions. I am in total agreement with the arguments advanced therein.
- 1.6 The law governing applications of legal guardianship is set out in the Children Act, Cap 59 (as amended) and the definition of the child is provided for under Section 2 whereas Section 3 (1) of the Children Act, which provides for 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.
- 1.7 Accordingly, Section 1 (g) (ja) of the Succession (Amendment) Act, 2022, a “guardian” means a person having legal and parental responsibility of the child”.
- 1.8 The Succession (Amendment) Act, 2022 under Section 25 which amends Section 44 provides for “**Statutory Guardian**” and states (1) Upon the death of either a father, a mother or both parents of a minor, where no guardian has been appointed by the will of the father or mother of the minor or if the guardian appointed by the will of either the mother or father is dead or refuses to act, the following persons shall, in the following order of



priority, be the guardian or guardians of the minor of the deceased person-

(a) The father or mother of the deceased parent of the minor;

It is against this background that this application is brought before this court.

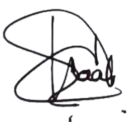
**The issue to be resolved by this Honorable Court is; whether it is in the best interest of the children (minor) that the applicant is granted a guardianship order?**

2.0 In any proceedings before any court the custody or upbringing of an infant, or the administration of any property belonging to or held in trust for an infant, or the application of the income thereof, is in question, the court, in deciding that question, shall regard the welfare of the infant as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of parent, or any right within the law possessed by the parent, in respect of such custody, upbringing and administration of property.

2.1 All the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the children and property should be taken into consideration.

2.2 The right to administer the child's property, to enter into certain contracts on her behalf, and to act for the child in legal proceedings ought to be obtained from a court with competent jurisdiction.

2.3 When court decides cases that deal with the upbringing of a child, or administration of a child's property, the "child's welfare" shall be the



court's paramount consideration. This is the welfare principle, sometimes called the paramountcy principle or the best interest test.

2.4 In that regard, this Court takes cognizes of Article 34 of the Constitution of the Republic of Uganda, 1995 (as amended), Section 3 (1) of the Children Act, Cap. 59 (as amended), Section 3(1) of the United Nations Convention on the rights of the Child, on the welfare of the child, which is a paramount principle.

2.5 According to paragraph 1, 2 and 4 of the affidavit in support of the application, the Applicant averred there in that she is the biological mother of the minors, Adrile Abel Pariyo, Amabe Jonathan Pariyo and Asiteru Patricia, unknown person lodged a caveat on land comprised in Kyadondo Block 167 Plot 6272 at Kiwale on behalf of Adrile Abel aPariyo and Amale Jonathan Pariyo.

Being the administer of the estate of the late Pariyo Anthony the applicant wishes to administer the estate including the property that has been caveated by unknown people on behalf of her two children.

2.6 The Property that the applicant wishes to remove a caveat from is comprised in Block 167 Plot 6272 Land at Kiwale. The property will need to be registered in the names of the minors as part of their share of estate of the late Pariyo Anthony.

2.8 This court finds that for a transaction of transfer and registration to be carried out by the applicant, the lodged caveat has to be released voluntarily by a caveator or by a court order and this can only successfully be concluded by granting of this application.



2.9 In the case of Ayla Mayanja High Court Miscellaneous Cause No. 20 of 2003, Court noted that any of the following persons may apply for guardianship:

- (i) Biological parents
- (ii) Any relative
- (iii) Any person not related to the child.
- (iv) Any adult person of sound mind.

3.0 Consequent to the above, the applicant has submitted to the fact that she is solely responsible for catering for the needs her children, while at the same time unknown people are using her children to caveat the estate. She does not have adverse interest to the children and her sole concern is protecting her children's properties because they are minors of tender years.

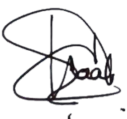
3.1 The applicant Candiru Judith, adduced adequate facts that support her application. She submitted all the relevant evidence. Her application hereby succeeds.

#### **4. Conclusion**

4.1. In consideration of the entire application, the submissions by the applicant, I hold that this application has merit. It succeeds.

4.2. Accordingly, therefore, this petition is granted in the following orders; that:

- (1) The Applicant is appointed a guardian of her own children namely; Adrile Able Pariyo, Amabe Jonathan and Asiteru Patricia.



- (2) The applicant shall have custody and care for the minor children.
- (3) The Applicant is authorized to lift the caveat lodged on land comprised in Kyadondo Block 167 plot 6272 Kiwale.
- (4) The Applicant shall have the minors' names (Adriale Able Pariyo, Amabe Jonathan and Asiteru Patricia) registered on the Certificate of Title comprised in land Block 167 Plot 6272 situate at Kiwale as Registered Proprietors.
- (5) The Commissioner Land Registration shall withdraw the caveat comprised in Block 167 Plot 6272 land at Kiwale.
- (6) The Commissioner Land Registration shall register the land comprised in Block 167 Plot 6272 at Kiwale in the names of the minors Adriale Able Pariyo, Amabe Jonathan and Asiteru Patricia.
- (7) The property to be managed include but are not limited to the property herein mentioned;
- (8) This order of guardianship is granted in the interests and welfare of the above stated children.
- (9) No orders as to costs.

***Dated, signed and delivered by email this 10<sup>th</sup> day of November, 2023.***



---

**CELIA NAGAWA  
JUDGE**