



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CAUSE NO. 10 OF 2015

IN THE MATTER OF AN APPLICATION FOR GUARDIANSHIP order of A L

[UNDER SECTION 102 OF THE CHILDREN ACT CHAPTER 141 OF 2001]

A N M.....APPLICANT

AND

A L.....SUBJECT

RULING

A N M (hereinafter applicant) has through an application for guardianship order premised under **Section 102** of the **Children Act (Cap 141 of 2001)** sought to be appointed as the legal guardian of A L (hereinafter the subject) and his estate.

He also seeks that the court does make such orders as may be necessary in the interest of the subject.

The application is premised on grounds that:

- a) The subject's biological mother D W M died on 26th July, 2014 and his father is not known.
- b) The applicant is related to the subject by virtue of being his maternal uncle.
- c) The subject has been under the custody of the applicant since the untimely demise of his mother.
- d) The applicant is ready and willing to assume full parent responsibility for the subject.
- e) The applicant fully understands his responsibilities as a guardian.
- f) It is in the best interest of the subject that a guardianship order be issued to the applicant as prayed.

The same is supported by a sworn affidavit by the applicant.

The gist of the grounds and the affidavit herein is that one D W M, the biological mother of the subject died on 26th July, 2014. A death certificate is annexed. The said D died intestate and as a single parent. The subject was her only child. There is a letter from the chief, Ol-Rongai location attesting to this.

The said D was the applicant's biological sister and as such the applicant is the subject's uncle. The applicant has had the care and custody of the subject since the demise of his (subject's) mother. The applicant is ready and willing to assume full parental responsibility for the subject and he fully understands his responsibility as the legal guardian as provided for in the Children Act.

He avers that he will be objective in his work if appointed as legal guardian for the subject and he has no interest averse to the subject.

I have had occasion to consider the application, the supporting grounds and affidavit and counsel's brief submissions.

Section 102(1) of the Children Act provides:

“For the avoidance of doubt, in this Part, “guardian” means a person appointed by will or deed by a parent of the child or by an order of the court to assume parental responsibility for the child upon the death of the parent of the child either alone or in conjunction with the surviving parent of the child or the father of a child born out of wedlock who has acquired parental responsibility for the child in accordance with the provisions of this Act.”

By dint of that section, this court is bestowed with the power to appoint a guardian to assume parental responsibility for a child upon the death of the parent of the child either alone or in conjunction with a surviving parent of the child.

In our instant case, there is evidence that the mother of the subject herein is deceased. She died a single parent. The application by A N M is apt and within the law.

The applicant has through his affidavit demonstrated the willingness and ability to assume parental responsibility for the subject herein and to undertake that responsibility as provided for in the Children Act.

On the material before me I am satisfied that the applicant is a suitable person to be appointed legal guardian to the subject.

I accordingly allow the application dated 18th February, 2015 in terms of prayer 1. The applicant is further ordered to at all time uphold the best interests of the subject herein. This appointment shall determine upon the subject attaining the age of eighteen years unless exceptional circumstances exist that would require this court to make an order that the appointment be extended in which the necessary application will be filed in court if and when that becomes necessary.

Dated, Signed and Delivered at Nakuru this 26th day of July, 2016.

A. K. NDUNG'U

JUDGE