GODFREY SAUNGWEME
versus
MASTER OF THE HIGH COURT N.O

HIGH COURT OF ZIMBABWE
TSANGA J
HARARE, 12 December 2016

Chamber application for guardianship

TSANGA J: This chamber application for guardianship was placed before me by the applicant, Godfrey Saungweme, in his capacity as the elder brother of the minor's father, Anesu Saungweme. The minor child is Tinotenda Mildred Saungweme born on 1 January 2004.

The applicant averred that both parents of the minor child are still alive albeit they separated in January 2014. Guardianship of the child was given in default by the Magistrate Court to the child's father Anesu Saungweme in January 2014. The applicant also averred that himself together with his wife have been looking after the said minor child who has been in their custody. They have been responsible of her upkeep, including but not limited to, her health and educational needs. He said he needs to perform juristic acts in the best interests of the child that have to do with that child's health and educational needs, which he cannot do without an order of guardianship in his favour. He also stated that the child's biological father who has guardianship rights, is in Zimbabwe but lives far away and that it is difficult for him to avail himself whenever a juristic act needs to be performed. A supporting affidavit of Anesu Saungweme regarding his willingness to surrender guardianship was also filed with this court.

However, what is notable about this application is its lack of factual detail as to the exact nature of the problems that have been encountered relating to the child's health or educational qualifications that would justify a surrender of guardianship, were it to be permitted. This court has been very clear about the limited circumstances under which it would allow such an application. The case of in *re Maposa* 2007(2) ZLR 333 makes it clear that the courts should be slow in granting the status of guardianship to a third party without

serious consideration of the factors surrounding such application. Similarly, the case of *Musonza* v *The Master* 2007 (2) 382 also makes it crystalline that transfer of parental power is only allowed in limited circumstances and normally after a full enquiry has been conducted so as to safeguard the interests of the minor chid. As further indicated in that case, the willingness of the parent to give away their rights does not appear to have any significance in the ultimate decision by the court whether to grant the guardianship of the minor child to another person. Furthermore, issues relating to where the child will live or where it will be educated are issues of custody and not guardianship.

It concerns me that this court is being asked to make such a vital decision concerning a child's life with the scantiest of information. There are no details as to where the child goes to school and not a scintilla of evidence of the challenges that have been actually encountered relating to the child's education, to support this application that guardianship needs to vested in the applicant due to difficulties in reaching the father. There is equally a deafening silence on the nature of the medical challenges encountered by the child that have surfaced the issue of guardianship challenges. Applications such as this must of necessity capture in some measure of detail the lived realities that give rise to the application. Simply put , the court needs to be put in the picture of what is really going on. In the absence of an adequate narrative that can provide the court with a picture of whether the application is *prima facie* even justified, there can be no basis upon which a court can call the parties involved for an enquiry when it remains unconvinced that even the remotest case has been made in support of an application for the transference of guardianship. This is more so where the parents of the child are alive and where the exceptional circumstances justifying the surrender of guardianship, need to be adequately highlighted. Also where parties are divorced, needless to say, the parent who does not have guardianship must be an active participant of the narrative on the surrender of guardianship.

It must also be borne in mind that the constitution in s 81 (1) (a) has given children equality before the law and the right to be heard. This connotes the power to speak for themselves on issues that concern them. A court is unlikely to be able to reach a child centred decision where it tolerates the exclusion of their part of the narrative on issues that involve them. The court cannot simply be asked to assume that the child is in agreement with the decisions made on her behalf when no evidence of consultation has been placed before the court. The minor child in this case is twelve years old and is not voiceless.

All too often this court is faced with shockingly cryptic narratives where orders involving the lives of children are concerned. This will not be tolerated.

Consequently, in the absence of compelling factual basis to support the order sought, this chamber application is dismissed.

Zimudzi & Associates, applicant's legal practitioners