

APPLICATION FOR GUARDIANSHIP IN RESPECT
OF TAKUNDA AND KUPAKWASHE HOPE MURINDAGOMO

HIGH COURT OF ZIMBABWE
MWAYERA J
HARARE, 4 January 2015

Review Judgment

MWAYERA J: The matter was brought for review by the trial magistrate who presided over an application for guardianship involving two minors. The biological mother of the two minors testified in the proceedings agreeing to have guardianship rights passed on to the grandmother of the children. The trial magistrate with hindsight realized that he had presided over the matter in error. He hence referred the record of proceeding for revocation of the proceeding by a review judge as he had no power to deal with cases where a parent is still alive.

Section 9(1) of the Guardianship of Minor Act [*Cap 5:08*] reads:-

“Without prejudice to the rights, powers and privileges of the High Court as upper guardian of minor children, and the Master in terms of s 74 of the Administration of Estates Act [*Cap 6:01*], the children’s court may, on application in terms of this section, appoint a fit and proper person to be the guardian of a minor who has no natural guardian or tutor testamentary.”

It is clear as correctly observed by the trial magistrate, that magistrates are precluded from dealing with an application for guardianship where one of the biological parents is available. The proceedings conducted by the magistrate therefore have no legal basis on which to stand.

Accordingly, the proceedings are a nullity and are hereby set aside.

TSANGA J concurs:.....