

**IN THE COURT OF THE CIVIL JUDGE**

**AIZAWL, MIZORAM**

**Guardianship Case No. 414 of 2013**

Smt. Florence Zothangliani : Petitioner  
D/o F Zothanbuanga  
R/o House No. B34/4  
Upper Republic, Aizawl  
Aizawl District

Versus

1. Shri. LT Zama : Opposite Party  
F/o Gnat Lalrinchana (L)  
R/o F/10, Nursery Veng, Aizawl  
Aizawl District
2. Smt. Whitney Lalrindiki : Opposite Party  
D/o LT Zama  
R/o F/10, Nursery Veng, Aizawl  
Aizawl District

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Case No.

: Guardianship Case No. 414 of 20145

### PETITIONER'S WITNESS

PW 1: Smt Florence Zothangliani, Petitioner (mother of the disputed minor children)

### OPPOSITE PARTIES' WITNESSES

OPW 1: Shri. LT Zama (paternal grandfather of the disputed minor children)  
OPW 2: Smt. Whitney Lalrindiki (aunt of the disputed minor children)  
OPW 3: Smt. Lalzawmi  
OPW 4: Shri. PC Lalchhuana  
OPW 5: Shri. PC Lalenga  
OPW 6: Smt Lalbiakkungi (maternal grandfather of the disputed minor children)

### PETITIONER'S EXHIBIT

Exhibit P – I: A copy of Marriage Certificate.  
Exhibit P – II: A copy of Court's Order dated 31.1.2013 passed by Civil Judge– I, Aizawl.  
Exhibit P – III: A copy of Court's Order dated 19.2.2013 passed by Civil Judge– I, Aizawl.

### OPPOSITE PARTIES' EXHIBIT

NIL

### **BEFORE**

### **H. LALDUHSANGA, CIVIL JUDGE**

Counsel for the Petitioner : Shri R Laltanpuia, Advocate & ors  
Counsel for the Opposite Party : Shri C Lalramzauva, Sr Advocate & ors  
Judgment pronounced on : 15.07.2016  
Judgment & Order delivered on : 15.07.2016

### **JUDGMENT & ORDER**

**Dated: 15.07.2016**

### INTRODUCTION OF THE CASE

1. This is a petition for Guardianship Certificate filed by Smt. Florence Zothangliani D/o F Zothanbuanga R/o House No B34/34 Upper Republic, Aizawl (*hereinafter called*

*Petitioner*) on 06.03.2013 in respect of one Sebastian Lalhriatpuia Hnamte and Howard Lalhriathlua Hnamte. It was duly stamped, accepted and registered as Guardianship Certificate Petition No. 414/2013. The Petitioner is the biological mother of the disputed minor children. The Opposite Party No. 1 is the biological paternal grandfather and Opposite Party No 2 is the aunty of the disputed minor children. The Petitioner and the biological father of the disputed minor children Gnat Lalrinchhana were married 19.06.2003 but Gnat Lalrinchhana had died on 13.01.2013. Heard both the Ld Counsels on Oral argument and received an inspiring Written argument from the Ld. Counsels for both the Parties. Furthermore, this Court had heard the two disputed minor children as well in the Court. We shall now go for more detail here in below.

#### PETITIONER'S VERSION

2. The Petitioner submitted **inter alia** she married with her deceased husband Gnat Lalrinchhana Hnamte on 19.6.2003 at the Christ King Cathedral Church, Kulikawn, Aizawl under the Diocese of Aizawl. Her deceased husband converted into a Catholic just prior to their marriage. The two children namely Sebastian Lalhriatpuia Hnamte and Howard Lalhriathlua Hnamte were born on 25.11.2003 and 21.12.2007 respectively between them. She had been working in the Mizoram University as a Stenographer, Grade-III, since 28<sup>th</sup> January, 2012. Her deceased husband was a Policeman suffering from depression and very aggressive who did not act as a normal person. Her deceased husband said to her, "Ka ma che". Accordingly, she got divorced by way of "Mak" and left the house of her in-laws on 16.08.2010 and stayed with her mother. Later, she shifted to her father's house in Republic Veng, Aizawl. Her deceased husband visited her in her mother's house on 13.01.2013 and he unfortunately died on that night itself.
3. After few days from the death of her husband, she was made to feel unwelcome in the house of the Opposite Party No 1. However as she worried about her children's welfare, she sent intermediaries (Palai) to the Opposite Parties and asking what would be the future of the children. The Opposite Party told the intermediaries that it was too early to talk about the steps to be taken for the children's future. However, she came to learn on 21.1.2013 that the Opposite Party No. 1 had filed a petition before the Court of the Civil Judge, Aizawl praying for issuance of a Guardianship Certificate in respect of her two minor sons but dismissed by the Hon'ble Court. Further, she was shocked to learn that the Opposite Party No.1 planned to send her two minor sons to follow the Opposite

Party No. 2 to Delhi for education without her consent and knowledge. She then filed CM Application No.77 of 2013 praying for restraining the Opposite Parties from taking the children out of Aizawl which was allowed by the Hon'ble Court. She also prayed for visitation right and sleep over right in respect of her two minor sons which was also allowed by the Hon'ble Court. Thereafter, she filed the present case.

#### OPPOSITE PARTIES' VERSION

4. The Opposite Parties filed a written objection. The Opposite Party No 1 submitted **inter alia** he was the paternal grandfather of the two disputed minor children and the Opposite Part No 2 was his daughter who was still staying with them under the same roof. The Opposite Party No 2 submitted that she was the aunt of the two disputed minor children. The Opposite Party No 1 submitted that his deceased son Gnat Lalrinchhana Hnamte and the Petitioner were married on 19.06.2003 at the Christ King Cathedral Church, Kulikawn, Aizawl under the Diocese of Aizawl. Out of the said wedlock the said Sebastian Lalhriatpuia Hnamte and Howrad Lalhriathlua Hnamte were born on 25.11.2003 and 21.12.2007 respectively. The said marriage had ended in divorce on 16.08.2010. At the time of the said divorce, Sebastian Lalhriatpuia Hnamte was a school going child while Howard Lalhriathlua Hnamte was only about 2 and half years old. Thereafter, his divorced husband Gnat Lalrinchhana Hnamte died on 13.01.2013. The present Petition for issuance of Guardianship Certificate in respect of the said two minor children was objected and contested. In fact, they had been looking after the said minor children since their birth. Undoubtedly, the Petitioner was the biological mother of the said two minor children. However, even at the time when the marriage between the Petitioner and Gnat Lalrinchhana Hnamte (L) was still subsisted, mother of Gnat Lalrinchhana Hnamte (L) namely Lalbiakkungi (OPW 5), Nene Lalrintluangi, Martha V.L Ngaihsaki and Lalnunsangi (Sangsangi) were the ones who actually looked after the said two minor children. Since, the said minor children had been looked after by them till date, they contested the present case and prayed for issuance of Guardianship Certificate in their favour.

#### ISSUES

- 1) Whether the application is maintainable in its present form and style or not?
- 2) Whether the applicant is entitled to the relief claimed and sought?
- 3) Whether the interest of minor children would be served if the application is granted in favour of the applicant?

## PETITIONER'S EVIDENCE

5. **PW 1 Florence Zothangliani (Petitioner)** deposed that she married on 19.6.2003 at the Christ King Cathedral Church, Kulikawn, Aizawl under the Diocese of Aizawl with father of the disputed minor children. Her deceased husband Gnat Lalrinchhana Hnamte converted into a Catholic before marriage and took the name of the Ignatious Gnat Lalrinchhana. The two children namely Sebestian Lalhriatpuia Hnamte and Howard Lalhriathlua Hnamte were born out of their wedlock on 25.11.2003 and 21.12.2007 respectively. During their marriage, she was staying with the Opposite Parties' family at Nursery Veng, Aizawl . After being done several jobs, she had been working in the Mizoram University as a Stenographer, Grade-III since 28th January, 2012. While her deceased husband was posted at the Vaivakawn Police Station, a major incident took place under the jurisdiction of the Vaivakawn Police Station in which one Mr. Lalpiangliana, Village Council Member of Tanhril died in police custody. A case was registered and in this connection, her husband was suspended with some other policemen due to their alleged involvement in the case. Due to this, her husband suffered severe case of depression and got admitted to Aizawl Hospital at Mission Veng for about one and half month during July and August, 2010. During the stay at Aizawl Hospital, she did not have any maid to help her in the household chores and she was extremely busy as she had to make/prepare food for her family and her husband. She had to be there at her husband's side as and when she could find time. During that time, her elder son was a school going child and the younger one was only around 2 ½ years old. Due to his depression, her husband was also very aggressive and did not act as a normal person. Her mother and cousin Julie Lalremsiami informed her that sometime in the month of August, 2010, they had been called twice or thrice separately and told that her deceased husband wanted her to stay with her parents for at least 2 months without informing them the reason for his strange request. When her maternal uncle, Dr. R. Zodingliana visited her husband in the Hospital in August, 2010, the same strange request was made by her husband without giving any reason for such request. The same was told to her mother by Dr. Zodingliana and subsequently informed her. She did not take the strange request seriously as she thought that it could be the effects of his depression. So, on 16<sup>th</sup> August, 2010, her husband was released from the Hospital. As per her usual routine, she started going towards the house of her in-laws after office hours. While on her way to the house, she received two calls on her mobile

from Mr. Hunter (Gnat's elder brother) telling her that she should not go home alone. She thereafter called her mother and younger sister namely Stephanie to accompany her to her in-law's house. On reaching the house, her deceased husband told her and her mother that she should go and stay with her biological mother or father. (Her mother and father were divorced in the year, 1992). As she knew the possible ill effects of separated couples and divorce was not allowed under the Catholic Church, she was very reluctant to leave her in-law's house. However, as her husband was very angry, aggressive, shouted at her that he divorced her by saying "Ka ma che". As he ordered again her to leave the house, then she then left them. While preparing and packing her belonging to leave the house, the Opposite Party No. 1 forbade her from taking the children along with her. He told that the children were supposed to stay with the father. She left the house of her in-laws on 16.08.2010 and stayed with her mother. She again shifted to her father's house at Republic Veng, Aizawl.

6. With hoping reconciliation and as she did not want to divorce her husband, she did not take all her belongings for about 7 months from her in-law's house. However, no attempt for reconciliation was made by her husband and as wife of the Opposite Party No. 1 again told her parents to take her belongings from the their house, she had no other option and took all her belonging from their house on 02.04.2011. In fact, all her belongings had already been kept ready by them on that day. During seven months from the date of divorce, her deceased husband used to allow the children to stay with her off and on. Even her deceased husband used to visit them frequently even after the marriage had stood dissolved. But, they did not send any intermediary (Palai) for a proper reconciliation. Her father used to tell her deceased husband to send intermediaries (Palai) for re-uniting the family. However, as they did not make any attempt to send intermediaries, her father became angry and disallowed her deceased husband to visit her anymore. Despite, she and her deceased husband carried on communicating through mobile phones. The children however came to live with her off and on as before. She also used to go to the Opposite Parties' house to meet her sons.
7. Thereafter, she was employed as Stenographer Grade-III at the KVK, Lawngtlai and remained there till December, 2011. Hence, from Lawngtlai, she came to learn that one L.P Pachuau delivered her deceased husband's child on 17.12.2011. Her deceased husband had been having an affair for quite some time. That on returning from Lawngtlai in December, 2011, she started living with her mother, joined Mizoram

University as Stenographer Grade-III in January, 2012 and still working there till date. That till the time of her husband's death, her deceased husband used to visit her in her house. He used to often keep the children with her when he was out of station. She also in turn used to visit her children in the Opposite Parties' house. She and her husband also spent time together with the children on 24.12.12. Her husband also spent time with her on 31.12.12. In fact, in January, 2013, he used to go very often to her house to meet her. That her deceased husband again visited her in her mother's house on 13.01.2013 and unfortunately died on 13.01.2013 itself.

8. After his death, she was made to feel unwelcome in the house of the Opposite Party. However as she worried about her children's welfare, she had sent intermediaries/"Palai" twice to the Opposite Parties asking as to what would be the future of the children. The Opposite Parties told the intermediaries i.e Dr. Lalnunthanga, Hrangvela and Pu F. Hrangkunga that it was too early to talk about the steps to be taken for the children's future. In the meanwhile, she came to learn on 21.1.2013 that the Opposite Party No. 1 had filed a petition before the Court of the Civil Judge, Aizawl praying for issuance of a Guardianship Certificate in respect of her two children but dismissed by the Hon'ble Court. Thereafter, she submitted an application for guardianship of her children vide Guardianship Case No. 312 of 2013. However, as she wanted to maintain good relation with the Opposite Parties for the sake of her children, Guardianship Case No. 312 of 2013 was withdrawn with liberty to file afresh. In the meanwhile, she was shocked to learn that the Opposite Party No. 1 planned to send her two children to follow her deceased husband's sister, i.e Opposite Party No. 2 to Delhi for education without her consent and knowledge. As being the biological mother of the two children, the best interest of the children would be served if they were looked after by her. The attempt made by the Opposite Parties to take away the children from Aizawl was only for the purpose of breaking contact between a mother and the children. That the best interest of the children would also be served if all the pension benefits left by her deceased husband were kept in a fixed deposit so that the children would enjoy the same when they became majors. Further, as she was having her own income she could look after her children besides giving love and affection to her children.

9. Further, she also come to learn that the children were being brainwashed and fed with lies during their stay in the Opposite Parties' house after the death of her husband which was totally perverse and despicable. Making an attempt by the Opposite Party No. 1 to

send the children with the Opposite Party No. 2 showed that the Opposite Party No. 1 was very old and was incapable of looking after the children. Regarding the Opposite Party No. 2, as being a singer in a hotel in Delhi, she usually performed at night; the same was again not conducive for bringing up children. In fact, she had filed Guardianship Case No. 414 /2013 and an order had been passed by Smt Julie Lalrinzami, Magistrate First Class vide order dt. 6.3.2013 directing the Opposite Party No. 2 not to take away her minor children outside Mizoram. However, the Opposite Party No. 2 failed to comply with the above order and her minor children were taken to Delhi by the Opposite Party No. 2 without her consent.

10. Furthermore, despite being the biological mother of the children, she was not allowed to meet her children and unwelcome in the Opposite Parties' house. As a result, she filed an application before the Court for visitation right and sleep over with her children in her house. Accordingly, an order was passed by the Court in her favour vide order dt. 5.6.2013. Due to the unwelcome stance taken by the Opposite Party No.1, she was not allowed to meet her children even when she went to their house. On 28<sup>th</sup> July 2013, daughter of the Opposite Party No 1, Nene Lalrintluangi had filed a written F.I.R at Aizawl P.S which was registered as GDE No.1210 at 7:30 pm dt. 28<sup>th</sup> July 2013 (Sunday) for merely attempting to meet her children in the Opposite Parties' house with her. On 30<sup>th</sup> July, 2013 at Aizawl P/S her statement was recorded. In fact, she was the fittest person to look after her minor sons as being a biological mother. Hence, prayed for legal guardianship of her two minor children Sebastian Lalhriatpuia Hnamte and Howard Lalhriathlua Hnamte for their best interest.

11. **On her Cross-Examination**, she deposed that it was not the fact that she did not make any contribution from her monthly salary to her in-law's family when they lived under the same roof. It was not the fact that she started her 'Computer Course' after their marriage. It was the fact that as she had to go out always for something important whilst living together with the Opposite Parties. In those days, wife of the Opposite Party No. 1 used to take care of the said two minor children. It was the fact that she used to sleep with her deceased husband when he was in the hospital. It was not the fact that her deceased husband told her to stay with her biological parents as he was not happy with her. After being dissolved the marriage, her deceased husband used to ask her to go back to them. However, as he did not send any intermediary, she refused to go home. It was the fact that after seven months from dissolving the marriage, she



collected her belongings from the house of her in-laws as per directed by them to do the same. It was not the fact that she did not visit her two minor sons after the marriage stood dissolved. It was also not the fact that she left her two little children who were crying for her on the eve of New Year in the year 2010 as she had preferred to go out for party outside the house. It was the fact that as she refused to go home even when her deceased husband asked for the same, she did not go back to her in-law's house till the death of her husband. It was not the fact that she was having a boyfriend when she was posted at Lawngtlai as a Stenographer. It was not the fact that she was in habit of beating her minor children. It was the fact that she did not know as to whether she was a nominee in the service book of her deceased husband. It was the fact that at the time of his husband death, she was living with her mother and younger brother. She did not know the reasons for going her deceased husband to their house on the night of his death. It might be in between 8:30-9:00Pm when her deceased husband met an accident. She could not say boldly that the Opposite Party No 2 used to pay her children's School monthly Fees. It was the fact that she was a cigarette smoker but drank beer only. She did not trust the Opposite Party No 1 and his wife to look after the disputed minor children. However, the Opposite Party No 2 was as far as she knew a good person and considered her fit for custody of her two minor sons. She admitted that the Opposite Parties' family did love and care her minor two sons. She was 32 years but had no intention to marry with any other man at the moment.

12. **On her Re-Examination** she deposed that the Opposite Party No 2 was a singer at 5 Star Hotel and hardly came home to Mizoram. Wife of the Opposite Party was having a little mental problem. After being dissolved the marriage, she used to visit the Opposite Parties on account of her two minor sons. She used to spend her earnings for making payment of Family debt when she was living with the Opposite Parties. She was presently a Stenographer Grade – III in the Mizoram University and drew Rs 21,000/- per month salary.
13. **On her Re-Cross-Examination**, she deposed that she had no proof that wife of the Opposite Party No 2 was having a mental problem. It was the fact that her mother was a shop-keeper who had to go out for her job for the whole day.

### OPPOSITE PARTIES' EVIDENCE

14. **OPW 1 Shri LT Zama** deposed that he was the Opposite Party No 2 and the minor children in the present case had been looked after by him since childhood. The said children were the sons of his deceased son Gnat Lalrinchhana Hnamte. Gnat Lalrinchhana Hnamte (L) and Florence Zothangliani got married on 19.06.2003. During her marriage with Gnat Lalrinchhana Hnamte (L), the Petitioner completed her 'Computer Diploma' and 'Short-Hand Course' at their expenses. He further deposed that the Petitioner had stated that she had been P.A. to Managing Director, MULCO Ltd., and an employee of HDFC Bank, Dawrpui; but she never had any contribution to the family and she did not formally inform about her said jobs to them during their marriage. As the Petitioner had frequently used to go out from their house, her children namely Sebastian Lalhriatpuia and Howard Lalhriathlua were looked after by him and his wife. Even during the succeeding two weeks after the death of Gnat Lalrinchhana, the Petitioner visited her children only for two times. This showed that she had no care for the welfare of her children and not entitled to grant Guardianship Certificate. He had been maintaining and developing a garden at Lawipu from which he earned proper income. Further, he was a contractor by profession, mentally and financially fit to look after his grand-children. The two children were born in his house. He had been taking care and looking after them since birth. Even after the marriage stood dissolved, the Petitioner paid no heed to her little children. She asked neither about their health condition or School examination result. Hence, prayed the Court to issue Guardianship Certificate in their favour.
15. **On Cross examination**, he deposed that he had worked as a Flight Mechanic Engineer (FME) but he received neither pension salary nor benefits from the Indian Air Force. He left the Indian Air Force in the year 1974. He was not a registered contractor under the Government. He gained about 9 Lakhs from the Contract when he built a school building in the year 2010. He received Rs 45,000/- per month from his Garden. It was the fact that his deceased son was suspended from the post of ASI, Police Department as he with other friends were alleged to have involved in case of the custodial death of one Lalpiangliana of Tanhril, Aizawl. It was true that the Petitioner was given visitation right to her two children by the Court in CM Application No 77 of 2013 Dated 5.6.2013.

16. **OPW 2 Whitney Lalrindiki** deposed that she was the Opposite Party No 2. Deceased Gnat Lalrinchhana was her youngest brother. None of her siblings took drugs or any intoxicated substances and all were fond of Sports and Music. Even during the lifetime of her younger brother, she used to spend her income for educating the two disputed minor children. In fact, she also used to give financial support to the Petitioner which enabled her to complete her 'Computer Course' (Diploma) from ITI and 'Shorthand Course' also. She further deposed that she earned income from Music and Fashion Industry which was sufficient to maintain the minor children. Even whilst living together, the Petitioner never contributed any amount towards the expense of the family. In fact, she and her parents were the ones who actually looked after the said minor children even during the said marriage. The Petitioner did not care for the welfare of her children even after the death of her brother. For all these reasons, the Petitioner was not fit to look after and take control of the disputed two minor children. Since the two minor children had been looked after by them till date, Guardianship Certificate in respect of the two minor children had to be issued in their favour.

17. **On Cross-Examination** she deposed that it was the fact that her statements in the examination-in-chief except Para 1 & 13 had not been mentioned in the written objection. She was presently 36 years and still single. She was presently living with her parents, Martha VL Ngaihsaki and the disputed minor children. Martha Lalngaihsaki was 17 years who just completed Class XII standard. Her parents had no permanent job but earned income from their Garden at Lawipu. She was the principal earner of the family. Her place of works were at Taj Mahal Hotel and Atrium Taj Group, New Delhi and went for the work in between 8:30 PM – 11:00 PM and 1:00 – 3:30 PM in weeks days and Sunday respectively. Her monthly income was Rs 65,000/-. She had been there in Delhi for her works since 2003. She used to go home for two or three times from Delhi in a year. There was no place to do in Mizoram as she did in Delhi. Her mother had met an accident two times in the year 2006 and 2008. They had no housemaid at the moment. It was not the fact that the Petitioner and her mother were living in their own house. It was on rented house. It was the fact that the Petitioner completed her 'Computer Diploma' after their marriage. She could spend about two months with the disputed minor children in a year. It was the fact that the Petitioner had sent intermediaries to them for custody of the disputed minor children. It was not the fact that they used to obstruct when the Petitioner was trying to visit her sons after divorce. It was the fact that as per Order passed by the Hon'ble Court, the Petitioner had a right to visit her

minor sons and sleep with them during weekends. Her mother had now got recovery and fit to take care and control of the disputed minor children but sometimes she had to take medicines. It was the fact that the written objection was drafted and submitted on the basis of her statement and her father's version. She had admitted the and also gave her signature on it.

18. **OPW No.3 Lalzawmi** deposed that she was living in a close neighborhood with the Opposite Parties and had good relationship with them. Even during their marriage, the Petitioner had always left the house and wife of the Opposite Party No 1 used to take care of the said two minors. The Petitioner never had any efforts for the family of her deceased husband. She used to leave their house for the whole day. She further deposed that the Petitioner never stayed at home even at the time of having a child except for the two succeeding months after giving birth to a child. After divorce, the Petitioner had left her children to be looked after by the Opposite Parties despite her younger son was only about two years old. The Opposite Parties were the best for custody of the disputed minor children.

19. **On Cross-Examination** she deposed that wife of the Opposite Party No 1 was her elder sister. During their marriage, the Petitioner was doing Computer course. The Opposite Party No 1 grew vegetables and sold it. He was also a multi-talented person who used to make walking stick, drumstick and artificial flower etc. from which he earned huge amount of money. She believed that the Opposite Party No 2 received around Rs 10,000/- per month from selling his growing fruits. She did not know as to whether the Opposite Party No 1 and Gnat Lalrinchhana (L) disallowed the Petitioner to carry home with her the said minors at the time of divorce. She did not know if deceased Gnat Lalrinchhana divorced the Petitioner by way of Mak. It was false that the Petitioner was disallowed to visit her minor sons. She did not know something about the income of Opposite Party No 1.

20. **OPW 4 PC Lalchhuana** deposed that he was 70 years and a permanent resident of Bungkawn High School Veng, Aizawl and had no blood relationship with the Opposite Parties. The Opposite Party was a prominent citizen and personally known to him. The Opposite Party No 1 had contributed a lot for the development and welfare of the Locality. He used to be one of the leaders of YMA in the locality. He had also been a member of Village Council by securing the highest vote in the Election. He was also a

multi-talented person and he used to make walking stick, drumstick and artificial flower etc. from which he earned huge amount of money. He was a respectable person and good in looking after the children. As such, his deceased son Gnat Lalrinchhana had also become World No.2 in Muaythai and brought him up to attain many achievements in the field of Sports and Arts. He concluded that the Opposite Party No 1 would be the fittest person to look after the said two disputed minor children.

21. **On Cross-Examination** he deposed that they had known each other with the Opposite Party No 1 since the year 1987. He did not know how much the Opposite Party No 1 actually earned from his hand-made items. He did not know something about the income of Opposite Party No 1. Wife of the Opposite party had been having a problem on her physical since she met an accident but the same did not mean that she was physically unfit to look after the said disputed minor children in the present case.
22. **On his Re-examination**, he deposed that the Opposite Party No 2 was still living with her parents.
23. **On his Re-Cross-examination**, he deposed that from her physical appearance, it could be seen that wife of the Opposite Party No 1 was still having a little problem on her legs and in performing walk.
24. **OPW 5 PC Lalenga** deposed that he was 62 years and a permanent resident of Bungkawn Nursery Veng, Aizawl. The Opposite Party was a prominent citizen and personally known to him. The Opposite Party No 1 had contributed a lot for the development and welfare of the Locality. He had held various posts such as the President Village Council, Bungkawn, Aizawl, the Secretary, Village Council, Bungkawn, Aizawl, the Chairman, JAC, Bungkawn, Aizawl and the President, VDP, Bungkawn, Aizawl. He had also secured the highest vote in the VC Election. He was also a multi-talented person and he used to make walking stick, drumstick and artificial flower etc. from which he earned huge amount of money. He was a respectable person and good in looking after the children. As such, his deceased son Gnat Lalrinchhana had also become World No.2 in Muaythai and he had brought him up to attain many achievements in the fields of Sports and Arts. He concluded that the Opposite Party No 1 would be the fittest person to look after the said two disputed minor children.
25. **On Cross-Examination** he deposed that the Opposite Party No 1 had completed 70 years. He deposed that they had known each other with the Opposite Party No 1 since

the year 1983. He did not know as to whether the Opposite Party No 1 was free from alcohol or not. The Opposite Party No 1 was enjoying his Pension salary from the Indian Air Force. It was the fact that another one grandchild of the Opposite Party No 1 was staying with the Opposite Parties. He did not know how much the Opposite Party No 1 actually earned from his hand-made items. He did not know something about the income of Opposite Party No 1. Wife of the Opposite party had been having a problem on her physical since she met an accident but the same did not mean that she was physically unfit to look after the said disputed minor children in the present case.

26. **OPW 6 Lalbiakkungi** deposed that she was the paternal grandmother of the disputed minor children. Father of the minor children was her youngest son. She was wife of the Opposite Party No 1 and mother of the Opposite Party No 2. They all were living under the same roof. The Petitioner was financed by them for making her completed her 'Computer Diploma and Short Hand Course' whilst living together as a family. Even while living together during the lifetime of her son, the Petitioner had always left her minor sons at home duty and she used to take care of them. Further, the Petitioner was not good in taking care, control and guiding her minor sons. She instead of kind and gentle words used bad languages upon her minor children very often. Furthermore, as she had to go out for her daily work always, she would not be able to take care of her minor sons properly. At the same time, the said two minor children had been living with them since birth, they felt comfortable with them. Again, the petitioner was a cigarette smoker and her two sons were unable to bear such smokes. In fact, they had been looking after the said minor children since before and even after the said marriage stood dissolved. She further deposed that the Petitioner was a Government servant who had to spend the whole day in the Office. Even the mother of the Petitioner had to look after her shop. Hence, both of them would have no time to spare for the two minor children. As such the Petitioner was not entitled to grant Guardianship Certificate.

27. **On Cross-examination** she deposed that she was presently 63 years and her husband was about 70 years. She had not completed Class X in her education line. All her sons and daughters except Opposite Party No 2 had got married and lived in separate houses. They were presently living with her husband, her daughter (Opposite Party No 2), her granddaughter namely Lalngaihsaki (18 yrs) and the two disputed minor children in the present case. Her deceased son left his Pension benefits in her favour including the Opposite Party No 1, Opposite Party No 2, her daughter Nene Lalrintluangi and the

two disputed minor children. It was the fact that the Petitioner was presently holding the post of Stenographer Grade – III in Mizoram University. The marriage between her son and the Petitioner had been ended in divorce in the year 2010 by way of 'Mak'. They were having a Fruit Graden at Lawipu but she could not say their family income per month. In the year 2007, she had met an accident, fell down from the roof, broke her leg and she was referred by the Doctor to Delhi for better treatment. It was the fact that the Opposite Party No 2 was a designer by profession and a singer in 5 Star Hotel. The said two disputed minor children were presently 11 years and 7 years. It was the fact that Nene Lalrintluangi lodged a written FIR at the Police Station against the Petitioner.

28. **On her Re-examination** she deposed that she got recovery from her injury when they went to Delhi for medical treatment. It was the fact that Nene Lalrintluangi lodged a written FIR at the Police Station against the Petitioner as one Siami who accompanied the Petitioner at that time in their house told that she knew the actual cause of Gnat Lalrinchhana's death and shouted if they wanted to die in the same way.

29. **On her Re-Cross examination** she deposed that on that day, when the Petitioner and one Siami went to their house, the Petitioner said nothing.

30. **On her further Re-examination** she deposed that Nene Lalrintluangi warned them that she would beat the Petitioner and Siami as Siami told that she knew the actual cause of Gnat Lalrinchhana's death and shouted if they wanted to die in the same way.

### **Issue No. 1**

Whether the application is maintainable in its present form and style or not?

31. Regarding issue No 1, it is my considered view that the instant case in fact, is a certificate case. I found ground for impossibility to maintain the present petition in its form and style or for rejection under Order VII Rule 11 as it is merely a certificate case.

### **Issue No. 2 and 3**

2) Whether the applicant is entitled to the relief claimed and sought?

3) Whether the interest of minor children would be served if the application is granted in favour of the applicant?

32. I would hereby consider Issue No 2 and 3. I have heard both the parties of the case at length. I have also gone through the entire evidence repeatedly. From the evidence, it appears that the Petitioner is the biological mother of the two disputed minor children who is applying for Guardianship in respect of her two minor sons. She has been working as a Stenographer Grade – III in the Mizoram University since 2<sup>8th</sup> January, 2012. She has not married with another after the death of her husband. She is self sufficient possessing sufficient means to maintain her two minor sons. In the meanwhile, it also appears from the evidence that she would no doubt have to leave her two minor sons on every working day as being a Government servant working in the Mizoram University, Aizawl. At the sametime, it is obvious that she would be submissive and dedicated to her two children if the custody of the said minors is given to her. In fact, the Petitioner has been showing love and affection enough to her loving two minor sons. This is right because if she has never worried about the welfare and future of her two minor sons, she is still young, only about 34 years and able person, she would have entered into marriage with another person. She is rather ready to sacrifice all her everything for the survival, welfare and well-being of her two minor sons. For all these reasons, it would be considered that the petitioner is fit to look after, carry, bring up, guide and take control of her two minor sons.

33. At the same time, it appears from the evidence that the Opposite Party No 1 and Opposite Party No 2 have always stood behind their two loving children through thick and thin even during the darkest period. The two Opposite Parties have been living together as being a father and a daughter. Both of them would be able to give financial support to the two minor children. From the evidence, it also appears that the Opposite party No 1 is a respectable and obedient person who had become a member of the Village Council and one time the Village Council President and also one of the leaders in various Non-Governmental Organizations in the Locality. The wife of the Opposite Party No 1 also had always guided, carried and dedicated to her two grand-children even during the adolescence and childhood periods of the two minor children. The Opposite Party No 2 is also a self-sufficient and unmarried who had always worked for the betterment and best interest of the two disputed minor children as being an aunt. After being considered all these, it is also considered that the Opposite Parties are also fit and ready for custody of the two disputed minor children.



34. Under these observations, situations and circumstances, I would reveal that importance and priority has never been given to the desires of the disputed minor child or children in the cases which had been decided by me. It was such because I held the view that the disputed minor children were still minors requiring care and protection and they were incapable of visualizing, foreseeing and understanding what would be the best interest and welfare for them. However, in the present case, it is my considered view from the evidence among others that both the families possessed sufficient means to look after the disputed minor children, and fit enough to lead and guide in all spheres and make them as normal obedient persons in the society. I had neither doubt nor suspicion on either the Petitioner or the Opposite Parties. In fact, I have also given my anxious consideration and best attempt for the best welfare of the disputed minor children. I have also considered the **basic needs, the physical needs, the comfort, the health, the moral, the intellectual, the spiritual life, the socio-economic sphere, the education, maintenance and welfare** of the disputed minor children. However, as both the Petitioner and the Opposite Parties were self-sufficient and considered equally well to look after the disputed minor children, I would travel to the willingness and desire of the disputed minor children. The priority and importance is given to the desire and willingness of the disputed minor children. As directed by the Court, the disputed minor children had attended the Court. Accordingly, the Court had observed as to whether the disputed minor children were old enough or fit to express their willingness and desire. On considering their ages, the Court examined the disputed minor children and found that the said minor children deposed their willingness and desire unambiguously and satisfactorily which was to remain in the custody of the Opposite Parties.

*Order X Rule 2 (2) CPC, 1908 says, "At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied."*

35. The disputed minor children are presently about 13 and 9 years and considered that they had made their choice freely and voluntarily without any influence or threat even at the time of examination by the Court. Both the minor children had preferred to be under the custody of the Opposite Parties on being asked and recorded by the Court which was found in the Case record by saying, **"Ka pi leh pute bula awm ka duh zawk"**.

Hence despite the Petitioner is the biological mother of the disputed minor children, giving custody to the grandparents of the disputed minor children would neither be unjust nor improper as both the children have also been under the custody of their paternal grandparents since birth i.e 2003 and 2007. Although the dedication, submission and sacrifice of the Petitioner for the survival and best welfare of the disputed minor children is very much appreciable, the disputed minor children shall live in the custody of their paternal Grandfather as desired, preferred and choice by them (the disputed minor children) before this Court. At the same time, the Petitioner is given a right to visit and meet the disputed minor children freely as being a natural mother.

36. It would also be stated that although custody of the disputed minor children goes to the Opposite Parties, the same would not mean that the Petitioner is personally unfit or the Court has doubt on her to be a guardian of her minor children. It would rather be appreciated her sacrifice for the best interest and welfare of her loving children. I would also spell out that I found neither hostility nor confrontation between the two families throughout trial of the present case. It is observed that these two families did not lead a cat and dog life other than contesting the present case. I therefore, wish both the families to live at peace in future, work together and join their hands together always for the welfare, well-being and the best interest of the disputed minor children in the present case in the time has to come and God bless the children.

### **ORDER**

37. Shri. LT Zama F/o Gnat Lalrinchhana (L) R/o F/10, Nursery Veng, Aizawl, Aizawl District is hereby declared and appointed as the Legal guardian of the disputed minor children namely Sebastian Lalhriatpuia Hnamte and Howard Lalhriathlua Hnamte unless and until they attain the age of majority as per the Indian majority Act, 1875 or further order.

38. Issue Guardianship Certificate as above.

39. Parties shall bear their own costs.

40. This Judgment & Order is pronounced in an open Court.

41. With the above Order, the instant petition stands disposed of.

**Given under my hand and seal of this Court on this day of the 15<sup>th</sup> July,  
2016 Anno Domini.**

**(H. LALDUHSANGA)**

Civil Judge,  
Aizawl, Mizoram.

Memo No.....:Dated Aizawl, the 15th July., 2016.

Copy to:

1. Smt. Florence Zothangliani D/o F Zothanbuanga R/o House No B34/34 Upper Republic, Aizawl through Counsel Shri R Laltanpuia, Advocate.
2. Shri. LT Zama F/o Gnat Lalrinchhana R/o F/10, Nursery Veng, Aizawl, Aizawl District through Counsel Shri C Lalramzauva Sr Advocate & ors.
3. Smt. Whitney Lalrindiki D/o LT Zama R/o F/10, Nursery Veng, Aizawl, Aizawl District through Counsel Shri C Lalramzauva Sr Advocate & ors.
4. i/c Judicial Section.
5. Case record.
6. Guard File

**PESHKAR**