

# GUARDIANSHIP

## after death of parent

That was a great soccer match! I will get us some cooldrinks.

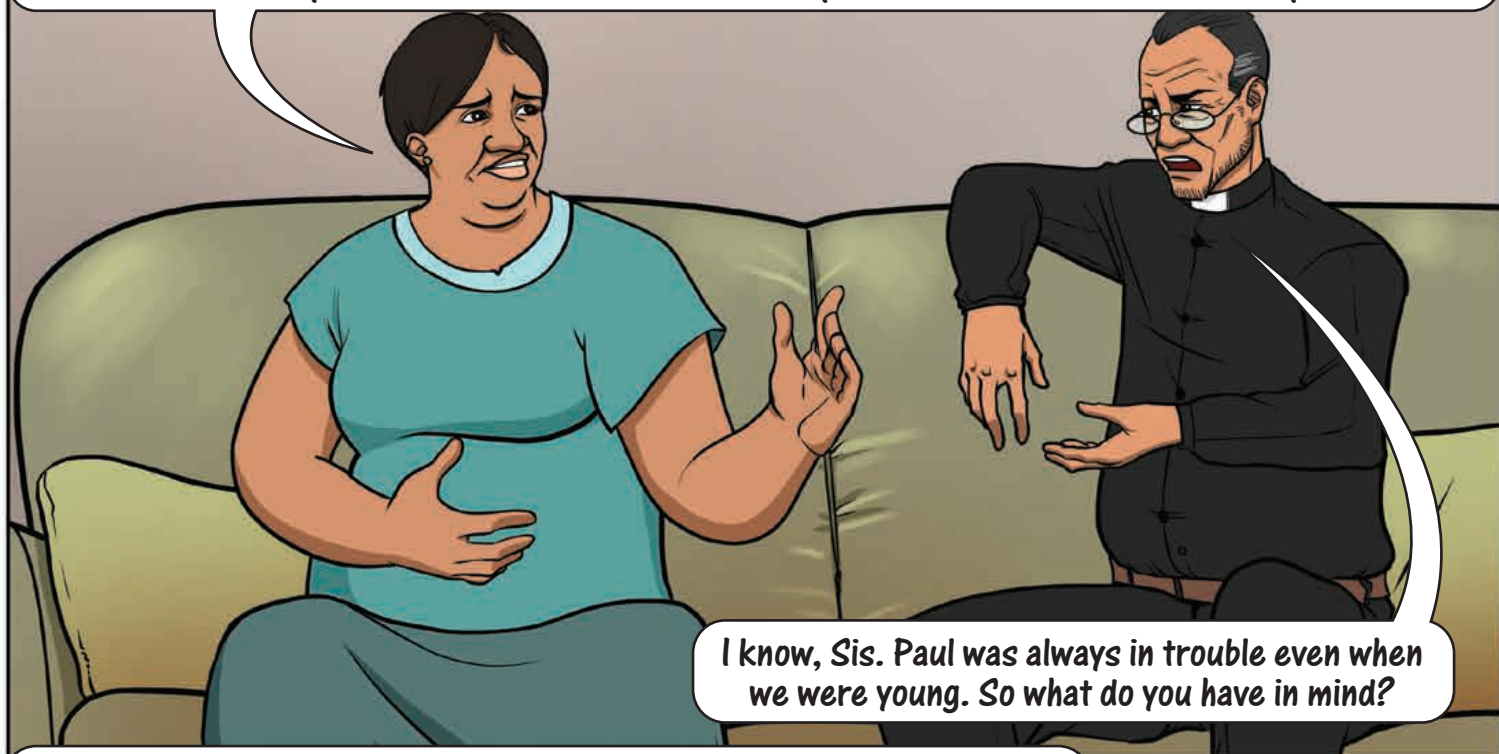
Big brother,  
there is something  
important I want to  
talk to you about.

Of course,  
Sis. It sounds  
serious. Is  
everything ok?





I'm concerned about what will happen to Luke if I die. You know his father, Paul, has been in and out of jail since Luke was a baby. He is up for possible parole soon. He is a very violent person and I don't want Luke to be exposed to a violent environment – especially when I am not around to protect him.



I know, Sis. Paul was always in trouble even when we were young. So what do you have in mind?

I want to ask if you will be Luke's guardian if something happens to me. The two of you have a good relationship and you are like a father to him.



I feel honoured that you've asked me, Sis. Luke is like a son to me too. How does appointing someone as a guardian work? I'm not very familiar with the legal process.

I will explain. But first I want to hear how Luke feels about it. Let's go talk to him.



That is a good idea. We should not make a decision about Luke's future without consulting him.

Luke, my boy, I'm talking to your uncle about who will take care of you if mommy is not there one day. If that happens, would you want Uncle Nick to look after you and take care of your needs?



I will feel safe with that plan, mommy, although it makes me sad to think about it.

I know, Luke, but it is important to decide these things while we are all together.

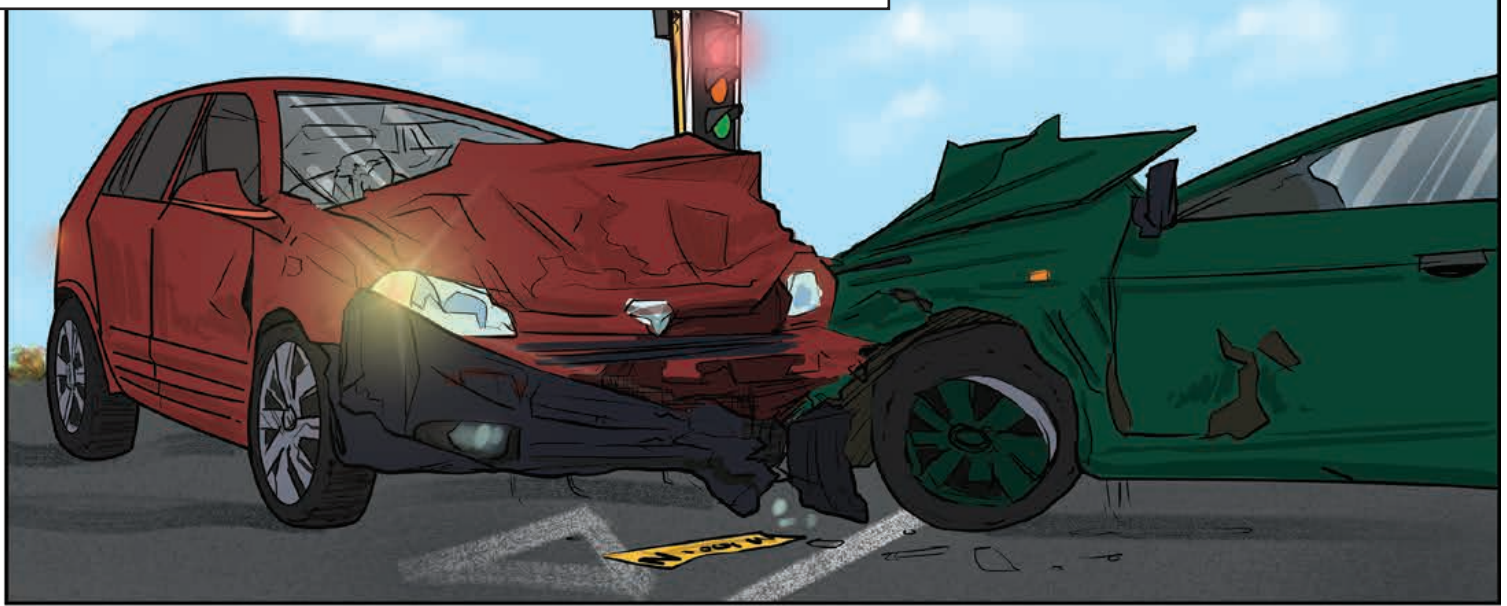
So we all agree. I will take care of this little man and be his guardian if he needs me.



**Guardianship** is the capacity to make important legal decisions on behalf of a child. If the child does not have a legal custodian, the guardian also has responsibility for ensuring that the child is cared for properly. A person who is a child's sole guardian can name a guardian for the child in a written will. This is a good idea because it prevents disputes, and makes sure that children have someone to look after them and safeguard their assets after a parent has died.



Three days later, before Luke's mom has made her will ...



Luke, I'm so sorry that your mother was killed. The accident was a horrible thing. I know that she wanted me to be your legal guardian, but the accident happened before she made her will.

Uncle Nick, I would really like for you to be the person who looks after me now. What can we do?

I will try to honour your mother's wishes. Since there was no will, I will go to the children's court and ask to be appointed as your legal guardian.

**What if there is no will naming a guardian?** The Child Care and Protection Act provides a simple procedure for appointing guardians in the children's court. Previously only the High Court could appoint a guardian after a parent's death, but many people found this process too inaccessible and expensive. Now there is a procedure that is available to everyone.

Greetings. So we finally meet. Lovely to see you, my boy, you are quite big now. Come give your father a hug.



Luke, please wait for me in the house.

Ok, uncle.

What can I do for you, Paul? What are you doing at my house?



You know I'm still Luke's biological father and I have certain rights. But maybe we can work something out. I understand he inherited quite well from his mom.

You have had no contact with Luke up to now and you are not a good influence. Luke's mother wanted me to be his guardian.

But she didn't make a will, so I can apply to the children's court to be appointed as his guardian. Then he and his inheritance will be mine!





Morning, Pastor. What can I do for you? Is everything fine with Luke at home?



Luke is doing very well. But there's a problem with his father. My sister did not make a will before she died. She and Luke's father, Paul, were never married. Paul was recently released from prison. He came to the house yesterday saying that he wants to be named as Luke's guardian and take Luke away. Can he do that?

What type of relationship does he have with Luke?



They never had a relationship. Paul has been in and out of jail since Luke was a baby. At one stage my sister even got a protection order against him because he threatened to beat her.



Just because he is the biological father doesn't give him automatic guardianship rights. You can both apply to the children's court to be named as Luke's guardian, and the court will consider what is best for Luke. The court will ask a social worker to investigate. It will also consider Luke's wishes before making a final decision.

Does that mean that Paul cannot just come and take Luke away from me?

He must wait for the court's decision.



If there is more than one application for guardianship, the children's commissioner will consider them together. The commissioner will consider the child's view if the child is mature enough to participate. The decision will be based on what is in the child's best interests.

I have received the social worker's report concerning the competing applications from Luke's father and his uncle, but I would still like to talk to Luke and another family member before I make my final decision.

We have Luke's maternal aunt here. She has been informed about the guardianship applications and is willing to give her input.



Please step outside. I want to speak to Luke and his auntie one at a time, on their own, so that they feel comfortable to say whatever is on their minds.



Can you tell me about Luke's relationship with his father and his uncle?



I remember my sister having a short but violent relationship with Luke's father. Paul used to threaten her sometimes. Luke never really knew his father, because he was in and out of prison. As far as I know, Paul did not make any effort to contact Luke. I do not think he is trustworthy to look after Luke or his inheritance.

My brother Nick always loved Luke and treated him like his own child. They have a close relationship and my sister told me that she wanted Nick to be Luke's guardian if she dies. Unfortunately, she did not make a will before she died.



Hi Luke, how are you today? Is everything ok at home and at school?

Hallo m'am, I am fine. School is good and I have many friends to play with. I stay with my Uncle Nick and he is very good to me. We have been close since I was very little.

That's good to hear, Luke. So how would you feel if you went to stay with your dad instead of your Uncle Nick? Would you like that?



No m'am, I would not like that. My mom asked me about this before she died, and I said I want to stay with Uncle Nick if something happened to her. I know I can trust him to take good care of me.



After considering all the information and talking to Luke and his aunt, I am granting guardianship of Luke to his Uncle Nick. I approve the application because the information presented indicates that this decision will be in Luke's best interest. I will issue the guardianship certificate. Pastor Nick, if you want to administer Luke's property, you will need to contact the Master of the High Court and complete some additional paperwork. My clerk will give you the details.



Congratulations, Pastor. I'm glad this is over so that you and Luke can continue with your lives. Luke is a lucky kid to have you as his guardian.



Thank you, George. I'm so happy that my application succeeded! I'm going to take very good care of Luke.

A person who is appointed as a child's legal guardian will also be the child's custodian unless a court directs otherwise. But it is possible for one person to be appointed as a child's custodian and another as the child's guardian.

For more information about guardianship after a parent's death, contact the Legal Assistance Centre.

If you have a comment or question about this comic, contact the Legal Assistance Centre:

**SMS: 081 600 0098**

**We would like to hear your  
FEEDBACK about this comic.**

An electronic version (PDF) of this publication is available on the LAC website: [www.lac.org.na](http://www.lac.org.na)



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