



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

ELC MISC. APPL. NO. E003 OF 2022

IN THE MATTER OF SECTION 17, 56, 57 AND 65 OF THE

TRUSTEE ACT (CAP. 167) LAWS OF KENYA

AND

IN THE MATTER OF THE SALE OF A PORTION OF LAND

PARCEL NUMBER MBETI GACHOKA 7867

AND

IN THE MATTER OF AN APPLICATION BY THE REGISTERED

PROPRIETOR AND TRUSTEE PURITY NDEGI MUGO

PURITY NDEGI MUGO.....APPLICANT

JUDGEMENT

1. What is before me for determination is the originating summons dated 13/2/2022 filed here on 16/2/2022 under a certificate of urgency. The matter has only one party – **PURITY NDEGI MUGO** – who is the applicant. The matter first came before me ex parte on 16/2/2022 and I expressed my reservations concerning the approach taken by the applicant of first trying to sell the trust property before first obtaining a court order. I also expressed my view that I was not dismissing the application at that stage as I needed time to look up the relevant law, particularly the Trustee Act (Cap 167, Laws of Kenya).

2. I also decided to give the matter a mention date – the date being 9/3/2022. When the matter came up in court on 9/3/2022 counsel for the applicant expressed his intention to submit. To the court, that was a welcome development because counsel would hopefully more elaborately articulate the applicable law.

3. Thereafter, learned counsel for the applicant filed written submissions and explained in detail why the applicant deserves the orders she is seeking. In the submissions, counsel made reference to Section 13 of the Trustee's Act (Cap. 167) which, inter alia, allows a trustee to sell trust property, if need be, in execution of his mandate or duty as a trustee. He made further reference to Sections 17 and 56 of the same Act which spell out the power and role of the trustee and the court in regard to sale and some other transactions relating to property held under a trust arrangement.

4. In this matter, the applicant is shown as the registered owner of Land parcel No. MBETI/GACHOKA/7867 in trust for herself and her five (5) children. Her five children are NIMROD MUTHOMI NJUKI, ANASTASIA NJOKI NGARI, JANE LORREN GAKENIA, FRANCIS COLLINS MURIITHI, and TRIZER PAULINE MURUGI. Of the five (5) children, two (2) – NIMROD MUTHOMI NJUKI and ANASTASIA NJOKI NGARI – are adults while the other three (3) – JANE LORREN GAKENIA, FRANCIS COLLINS MURIITHI and TRIZER PAULINE MURUGI – are minors.

5. The applicant desires to sell a portion of Land parcel No. 7867 in order to raise money to pay school fees for her school-going children. She has already found a willing buyer, shown in this matter to be one EDITH WANJUKI NGARI. The applicant's adult children have already consented to the sale and each has sworn an affidavit to that effect. The applicant is of course the one to make the appropriate decision for her minor children.

6. Counsel for the applicant made available to this court ELC Miscellaneous Civil Suit No. 62 of 2013, NAIROBI, where the applicant – EUNICE WANJERI NJENGA – approached the court much the same way as is done here. The issues in that matter were also broadly similar to the issues in this matter.

7. In this matter, the applicant has shown that she is a trustee for her five (5) children in relation to Land parcel No. 7867. It is reasonably clear that she is acting in the best interests of her children. She comes across as a responsible mother. She is not motivated by greed or other ulterior motives. She wants her children to be educated. That is what a responsible parent would wish and do for his/her children.

8. It turns out now that this is essentially a simple matter. It is my considered view that the orders sought by the applicant are well merited. I therefore allow the application in terms of prayer 2, which was asked for as follows:

(2) That the applicant be granted leave to excise and sell a portion measuring 0.05 Hectares out of Land parcel No. Mbeti/Gachoka/7867 and the proceed realized from the sale of the same be applied in the settlement of the following:

a) The cost of and incidental to the subdivision and the transfer.

b) The payment of school fees and for the purpose of future application in the education of Anastacia Njoki Ngari; Nimrod Muthomi Ngari, Francis Collins Muriithi Ngari, Trizer Pauline Murugi Ngari and Jane Lorren Gakenia Ngari.

9. I make no order as to costs.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 23RD DAY OF MARCH, 2022.

In the presence of Kimanzi for applicant.

Court Assistant: Leadys

A.K. KANIARU

JUDGE

23.03.2022