



**Malde v Malde & 4 others (Environment & Land Case E040 of 2022)
[2023] KEELC 17671 (KLR) (22 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17671 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E040 OF 2022**

BM EBOSO, J

MAY 22, 2023

BETWEEN

NIRMALA SHASHIKANT DEVSHI MALDE APPLICANT

AND

ATISH SHASHIKANT DEVSHI MALDE 1ST RESPONDENT

ATUL SHASHIKANT MALDE 2ND RESPONDENT

ALKA CHETAN RATILAL SHAH 3RD RESPONDENT

RAJESH CHHOTALLAL DEVSHI MALDE 4TH RESPONDENT

SANJAY CHHOTALLAL MALDE 5TH RESPONDENT

JUDGMENT

1. On July 26, 2021, the High Court [Maureen A. Odero J] issued a grant of probate relating to the estate of Shashikant Devshi Nathoo Malde [the deceased] to: (i) Nirmala Shashikant Devshi Malde [the applicant]; (ii) Rajesh Chhotallal Devshi Malde [the 4th respondent]; and (iii) Sanjay Chhotallal [5th respondent]. The said grant of probate was confirmed on July 8, 2022 by the High Court [Thande J]. The deceased's 25% share in title number Ruiru Town/90 [the suit property] is the one of the assets that were distributed in the certificate of confirmation of grant of probate. The deceased's 25% share in the suit property was vested in the applicant, to hold for a life interest for her lifetime and thereafter, the 25% share would be transferred to the 1st, 2nd and 3rd respondents [the deceased's children] in the ratio of 12.5%, 7.5% and 5% respectively.
2. Against the above background, the applicant took out an originating summons dated December 1, 2022. The originating summons was subsequently amended on April 19, 2023. She sought the following orders:
 - a. That this application be certified as urgent and be heard on priority basis.



- b. That the applicant be hereby permitted and empowered by this honourable court to proceed with the sale and transfer of her 25% shares which she holds in title number Ruiru Town/90 for a life interest for her lifetime and thereafter to be transferred to the 1st, 2nd and 3rd respondents to enable her comply with the terms of the agreement for sale dated August 23, 2022.
 - c. That the applicant shall apply the proceeds of sale for the benefit her children as per the shares they are to hold in the said property.
 - d. That upon granting prayer (B), the Land Registrar, Ruiru Lands Registry be authorized to effect registration of the transfer of title number Ruiru Town/90.
3. The originating summons was expressed as having been taken out under sections 13, 17(1) and 57 of the *Trustees Act*, sections 1A, 1B and 3A of the *Civil Procedure Act*, and order 37 rules 1(f) and 3 of the *Civil Procedure Rules*.
 4. On February 15, 2023, this court [Eboso J] directed the applicant to amend the originating summons and join the other three beneficiaries as the 1st, 2nd and 3rd respondents. The court further directed the applicant to join the other two registered co-proprietors of the suit property as the 4th and 5th respondents in the originating summons. Lastly, the court directed the applicant to serve the five respondents so that they could be heard on the originating summons.
 5. The five respondents entered appearance through M/s BMA Advocates LLP. They all filed separate affidavits supporting the case of the applicant. They similarly attended the virtual court during the hearing of the originating summons on May 16, 2023 and supported the originating summons.
 6. The common position of all the parties to the original summons is that the four beneficiaries to the estate of the deceased, together with the two co-proprietors of the suit property, are desirous of disposing the suit property and they have sanctioned and consented to a sale of the suit property to one James Muriuki at Kshs 54,000,000. A sale agreement has been executed to that effect. A deposit of Kshs 6,000,000 has been paid. The balance of the purchase price is to be paid upon registration of the transfer in favour of the purchaser.
 7. When the originating summons came up for hearing on May 16, 2023, the court sought to know why the applicant elected not to apply for a review of the certificate of confirmation of grant. Counsel for the parties explained that they elected not to apply for a review because the certificate of confirmation of grant was a reflection of the wishes of the deceased and that the said wishes had been fully implemented through vesting of the suit property in the name of the applicant.
 8. I have considered the originating summons. From the evidence presented to the court, it is clear that all the four beneficiaries are adults. The applicant is mother to the other three beneficiaries. She has a life interest in 25% share of the suit property. Each of the applicants has sworn an affidavit supporting the originating summons.
 9. In the above circumstances, the court does allow the amended originating summons dated April 19, 2023 in terms of prayers B, C and D. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 22ND DAY OF MAY 2023

B M EBOSO

JUDGE

In the Presence of: -



Ms Wangechi for the Applicant and for all the Respondents

Court Assistant: Hinga/Osodo

THIKA ELC CASE NO E040 OF 2022 (RULING) Page 4

