



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT MOMBASA

MISC. NO. 2 OF 2021

IN THE MATTER OF AN APPLICATION FOR LEAVE TO REGISTER A CHARGE OVER PROPERTY TITLE NO. MOMBASA/MN/BLOCK 1/264

AND

IN THE MATTER OF MWG, BKN, MWN & BGN (MINOR)

AND

MWG,BKN & MWN..... APPLICANTS

RULING

(Application seeking an order to charge property held in trust for a minor; application dismissed)

1. The application before me seeks the following orders :-

(i) That the matter be certified as urgent.

(ii) That this Honourable Court be pleased to grant consent to charge Title No. Mombasa/MN/Block [xxxx] on behalf of BGN (minor) and the Registrar of Lands to effect the said conveyancing documents.

(iii) That the costs of this application be provided for.

2. The supporting affidavit is sworn by Margaret Wanjiru Githaka. She is the mother of BGN (a minor), BKN and MWN. B is a final year student at the University of [Particulars withheld] School of Law, whereas M is a first year student at [Particulars withheld] University and they are all under her care. The property in issue, Mombasa/MN/Block [xxxx] (the suit property) is registered in the name of MWG (Ms. M) as trustee of the three children. It will be seen that in this application, the applicants seek an order to be allowed to charge the said property. There would of course be no issue on it if all the parties were adults, but there is a minor involved, and the applicants cannot thus proceed to charge the property without an order of court.

3. I have looked at the reasons why the applicants want to charge the property. They want to take a loan of Kshs. 3,000,000/= from Equity Bank Limited so as to construct another property identified as LOC.7/Gakoigo/[xxxx] said to be in Muranga. When the application came up for hearing, I inquired why the applicants do not wish to use this property in Muranga, as security, so that the suit property is not affected. The response I received is that there is an issue regarding title of this property in Muranga. I have myself not seen any title to this property in Muranga for none was displayed.

4. This court has to be careful before placing a property that is held in trust for a minor into jeopardy. This is because, in a situation, such as this before court, once the property is charged, it can be liable to be sold in the event of default. That is a real possibility that we cannot run away from. If it is lost, the minor will have no benefit of the trust and will have no property. Moreover, and it is confirmed, there is an issue regarding the title of the property that is to be developed. It is also not clear to me who owns that property as no title was displayed. That further militates against using trust property to develop another property that is of unclear propriety.

5. Given the foregoing, I am not persuaded that it will be in the interests of the minor if I order the suit property to be charged. I am of the view that it is necessary to safeguard the suit property until the minor is of age and capable of making decisions over the same.

6. For the above reasons, I dismiss the application herein. There will be no orders as to costs.

7. Orders accordingly.

DATED AND DELIVERED THIS 21ST DAY OF MAY 2021

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA