



**Wakufwa & 40 others (Suing on their own behalf and on behalf of 37 others) v Maru
(Environment & Land Case 81 of 2016) [2023] KEELC 20996 (KLR) (25 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20996 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 81 OF 2016
NA MATHEKA, J
OCTOBER 25, 2023**

BETWEEN

**FRANK NYAMBU WAKUFWA 1ST PLAINTIFF
MUSA JUMA SHOGHOSHO 2ND PLAINTIFF
JIMMY K MONGO 3RD PLAINTIFF
GEORGE GAMBA ZOMBO & 37 OTHERS 4TH PLAINTIFF
SUING ON THEIR OWN BEHALF AND ON BEHALF OF 37 OTHERS**

AND

BHARRABALA RAJENDRA KUMAR MARU DEFENDANT

RULING

1. The application is dated 9th June 2023 and is brought pursuant to order 18 rules 2 and 3 & order 51 rule I of the *Civil Procedure Rules of Kenya (2020)*. Sections IA, 1B and 3A of the *Civil Procedure Act* of Kenya seeking the following orders;
 1. That this Honourable Court be pleased to grant leave to Paresh Jayantilal Maru, to orally and/or in writing testify in respect to the Defendant/Applicant -case as duly authorized by the Defendant/Applicant herein, Bhadrabala Rajendra Kumar Maru, pursuant to the General Power of Attorney dated 13th July 2022 and registered on 18th May 2023.
 2. That costs of this Application be the cause.
2. It is based upon the grounds that the Applicant who has been sued as party to these proceedings is an elderly woman aged 85 years old. Since the institution of this suit 7 years ago, she has continued to struggle with attending to ordinary day-to-day activities hence her availability to testify in this matter stands to be a challenge. Owing to the above, it did become imperative for her to appoint her son, Paresh



Jayantilal Maru, as a donee in respect to the exercise of certain responsibilities concerning her pending legal matters. On the 13th July 2022, the Applicant donated a general power of attorney to her son aforementioned in which power to carry out the following were donated to defend these proceedings, which power includes to testify and to produce relevant documentation in support of the defence mounted herein; to sign all such documents and to do all such acts, matters and things as may be necessary or expedient for carrying out the powers hereby given in defending the suit with respect to Title No CR 7187 (Parcel No 413 of Section 1 Mainland North) and to do all other things incidental to the above powers or which the Attorney thinks necessary or expedient in relation to the Property as fully and effectually as the Defendant could do themselves.

3. The Applicant's son, Paresh Jayantilal Maru, is well versed with the facts in issue in these proceedings and is competent to testify as her witness in these proceedings. The Respondents do not stand to suffer any prejudice if the orders sought for herein are granted as prayed. Conversely, if the subject application is disallowed, the Applicant will be highly prejudiced as her case will be closed without calling any witnesses or production of any documents. It is in the interest of justice that the subject application be allowed for the determination of the real issues in controversy in these proceedings.

4. This court has considered the application and submissions therein. According to Black's Law Dictionary, a Power of Attorney is:

"An instrument authorizing a person to act as the agent or attorney of the person granting it."

5. The power of attorney is used to allow another person to act as if it was the person that is giving the power of attorney. Examples are in transactions for sale of land, registration of intellectual property, filing of lawsuits, signing off on documents, opening of a bank account etc. A power of attorney can be specific or general in its nature. When a power of attorney is Specific, it is executed only for a particular purpose. In the instant case the power of attorney is general.

6. In *Mayfair Holdings Ltd v Ahmed* (1990) eKLR, the learned Judges of Appeal observed that since 1971 powers of attorney are controlled by the *Powers of Attorney Act* of the United Kingdom. The General power of Attorney is provided for in section 10 of the said *UK Act* as follows:

a) Effect of general power of Attorney in specified form.

(1) Subject to subsection (2) of this section, a general power of Attorney in the form set out in Schedule 1 to this Act, or in a form to the like effect but expressed to be made under this Act, shall operate to confer—

(a) on the donee of the power; or

(b) if there is more than one donee, on the donees acting jointly or acting jointly or severally, as the case may be, authority to do on behalf of the donor anything which he can lawfully do by an attorney.

(2) Subject to section 1 of the *Trustee Delegation Act* 1999, this section does not apply to functions which the donor has as a trustee or personal representative or as a tenant for life or statutory owner within the meaning of the *Settled Land Act* 1925.

7. In the case at hand the Applicant who has been sued as party to these proceedings is an elderly woman aged 85 years old. Since the institution of this suit 7 years ago, she has continued to struggle with attending to ordinary day-to-day activities hence her availability to testify in this matter stands to be a challenge. Owing to the above, it did become imperative for her to appoint her son, Paresh Jayantilal



Maru, as a donee in respect to the exercise of certain responsibilities concerning her pending legal matters. I see no prejudice that will be suffered by the Respondents if the application is allowed. The Applicant is an 85 year old lady and clearly the court process has taken a toll on her. I find that this application is merited and I grant the same. Costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF OCTOBER 2023.

N.A. MATHEKA

JUDGE

