



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 2613 OF 2008**

**IN THE MATTER OF THE ESTATE OF K O S**

**P M (DECEASED)**

**RULING**

1. By a chamber summons dated the 29<sup>th</sup> day of October 2014 the applicants administrators M L and B P K are seeking an order to allow them sell five (5) acres of Land Reference 14756/[particulars withheld] held by N K in trust for D L K, M K K, M R K and S M K to enable her raise monies for school fees and the upkeep of M K K. The application is brought under Section 3 A of the Civil Procedure Act, Section 47 of Cap 160 and Rule 73 of the Probate and Administration Rules.

2. The application is supported by the affidavits of the applicants dated the 29<sup>th</sup> of October 2009 and the affidavits of N K dated the 24<sup>th</sup> April 2017, 6<sup>th</sup> July 2017 and 14<sup>th</sup> July 2017. The gist of the said affidavits is that N K holds in trust 4.125 Hectares being a portion of Land Reference Number 14756/[particulars withheld] for D L K, M K K, M R K and S M K. That M is a student in **[particulars withheld]** and the trustee is required to pay fees and meet his other expenses. That N also has two children in secondary whom she needs to educate. That N sold off part of the land but the cost of subdivision was met by the prospective buyers. That she needs to transfer 5 acres because the buyers have already spent her money. According to N affidavit dated 24<sup>th</sup> April 2017 the fees for subdivision was kshs.635,000/- in the year 212 which was paid by Close Four Limited as part of the purchase price Kshs. 1,500,000/-. That she is a widow who does not have reliable sources of income she is aged and depends on little business she operates to keep her and the children's afloat. The parcel of land she seeks to transfer is 5 acres L.R No. 14756/[particulars withheld] to Close Four Limited.

3. I have considered the application. According to the certificate of rectified confirmed grant dated 21<sup>st</sup> November 2011, N K holds in trust Parcel No. L.R. 14756/[particulars withheld] which constitutes 4.125 hectares in trust for D L K, M K K, M R K and S M K. In their application the applicants have exhibited a letter from the Institute of [particulars withheld] Limited dated 16<sup>th</sup> October 2014 showing that M K K was admitted for a course. In the affidavit dated 16<sup>th</sup> Mach 2015 N has exhibited a letter from Top Cad Surveys on the subdivision of L.R No. 14756/[particulars withheld] – S.W of Mavoko Town. In a further affidavit dated 24<sup>th</sup> April 2017 she has exhibited a letter of admission in respect of K S M from **[particulars withheld]** dated 4<sup>th</sup> January 2017 plus a letter of admission dated 16th January 2017 from **[particulars withheld]** for K M. There is also a letter from **[particulars withheld]** in respect of M K stating the fees due. It is evident that Naomi is facing financial needs in respect of her children education and upkeep. There is however no evidence shown that she sold land and that she owes the persons she calls prospective buyers who are not disclosed survey fees. She has not justified why she should sell a total of 5 acres. Having noted Naomi's responsibilities, I authorise the applicants to sell **3 acres** of L.R. No. 14756/[particulars withheld], held by N K in trust for D L K, M K K, M R K and S M K to cater for her children's school and college fees and their upkeep. The applicants shall ensure that the funds obtained from the sale of the said parcel of land (3 acres) are invested in a profit earning institution for the benefit of all the beneficiaries. No orders as to costs. It is so ordered.

Dated, signed and delivered this **18<sup>th</sup>** Day of **August 2017**

**R. E. OUGO**

**JUDGE**

**In the presence of:**

Mr. Mulandi for the Applicants.

Ms. Charity Court Clerk