



**Shatry (Environment and Land Civil Miscellaneous Application
E034 of 2023) [2023] KEELC 22352 (KLR) (13 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22352 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CIVIL MISCELLANEOUS APPLICATION E034 OF 2023
NA MATHEKA, J
DECEMBER 13, 2023**

**IN THE MATTER OF
ABDULAZIZ SHARIFF ABDURAMAN SHATRY APPLICANT**

RULING

1. The application is dated 9th June 2023 and is brought under Sections 18 of the *Wakf*, Act No. 8 of 2022 seeking the following orders;
 1. That the property known as Mombasa /block be sold and the proceeds thereof be used to purchase another property as Wakf.
 2. That no orders as to costs.
2. It is supported by the annexed affidavit of Abdulaziz Shariff Abdulrahman Shatry on the following grounds that the property known as Mombasa /block XXX112 was registered as a Wakf on the 26th of November, 1947 by Shariff Mohamed Bin Ahmed Shatry (deceased) and now vested in the Applicant as a trustee after the immediately preceding trustee, Shariff Abdulrahman Shatry (Deceased) passed away in 2007. That the maintenance of the property outweighs the revenue generated by the property hence causing a strain on the Wakf. The trust is a charitable trust to benefit the Muslims as such the current cost of maintaining the property outweighs the income generated by the property hence the need to sell the same to purchase a better property to continue the Wakf. It is in the interest of justice and for the continuance of the Wakf that another property be purchased.
3. I have considered the application and the supporting affidavit therein. A Wakf is defined under section 1 of the *Wakf Commissioner's Act* to mean “the religious, charitable or benevolent endowment or dedication of any property in accordance with Muslim law.”
4. A trustee is defined to “include any person whether alone or jointly with another in control of any property the subject of a Wakf or in receipt of any rents or profits thereof.”



5. Section 18. (2) of the said *Act* provides that;

“A person who intends to sell immovable Waqf property shall make an application to the Environment and Land Court and the Environment and Land Court may allow the application or issue any other order it deems appropriate.”

6. *In re Estate of Sbeikh Bin Muhaji (Deceased)* (Succession Cause 219A of 2011) (2015) KEKC 17 (KLR) (10 December 2015) (Judgment), the court stated that;

“Wakf literally means confinement and prohibition. Under Islamic law it is the detention of specific properties in the ownership of wakf and the devoting of its profits or products in charity of poor or other good purposes. It is also defined as a form of gift in which the corpus is detained and the usufruct is set free. Al Sharbiny al Khatib in al Mughny al Muhtaj defines wakf as detaining of corpus and setting free its usufruct for use in an available and legally permissible purpose” Al Mughny 2/372. Wakf is sadaqa charity fisabilillah in the cause of and to please of Allah.”

7. The Applicant stated that the trust is a charitable trust to benefit the Muslims as such the current cost of maintaining the property outweighs the income generated by the property hence the need to sell the same to purchase a better property to continue the Wakf. The only annexures in this application is a copy of the identity card of the Applicant and the title deed of the suit property issued on the 21st March 2019 in the name of Abdulaziz Shariff Abdulrehman Shatry as trustee of the Wakf. There is no trust deed to confirm the identity of the trustee and no search certificate to confirm current ownership. Who are these beneficiaries of the said Warf? What is the current cost of maintaining the property and what is the income? Where does the Applicant intend to invest this money after the sale? I find this application lacks material disclosure and the court cannot determine whether this sale would be in favour of the beneficiaries or not. I find this application lacks merit and I dismiss it with no orders as to costs as it was exparte.

8. It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 13TH DAY OF DECEMBER 2023.

N.A. MATHEKA

JUDGE

