



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ELC MISCELLANEOUS NO. E044 OF 2021
IN THE MATTER OF
SECTIONS 17, 18, 56 AND 57 OF THE TRUSTEES ACT
AND
IN THE MATTER OF
THE SALE OF A PORTION OF PARCEL OF LAND TITLE
NUMBER ABOTHUGUCHI/KARIENE/5699
LKD..... APPLICANT

RULING

1. Before the court is the ex parte originating summons dated 2.11.2021 brought under **Article 53 of the Constitution and Order 37 of the Civil Procedure Rules**, seeking for leave to have the applicant excise and sell a portion **measuring ¼ acre** of **L.N. Abothuguchi/Kariene/5699** and the proceeds be applied towards the educational needs and development of the rest of the property held in trust for the minor LMM. The application is supported by the affidavit sworn by the applicant on 2.11.2021 in which she has attached a copy of the title deed, search certificate, school fee structure and terminal reports marked as annexures **No. LKD 1 – 5** respectively.
2. The grounds are that the property is held in the name of the applicant for and in trust of the minor, she is overwhelmed by school fees, has identified a potential buyer, she intends to sell a portion so that she can develop the rest of the property for the welfare of the minor especially his educational needs.
3. Further, it is averred she has been struggling a lot and the situation has been worsened by Covid 19 pandemic. She states she wants to give the minor the best education, and that it is only fair she be allowed to dispose of a portion of the property to improve the other properties in order to generate better income for the welfare of the minor and herself.
4. In brief testimony before the court, the applicant reiterated the contents of the application together with the affidavit. She produced the supporting documents as **P exh 1 – 5** and promised to avail a copy of the birth certificate and file a further affidavit to include the missing information especially her other children beyond the age of 18 years.
5. Similarly, the applicant told the court the trust property had been left for the minor by her late husband.
6. The court directed the filing of the further affidavit within 3 days and written submissions. As at the time of writing this ruling, there was no compliance with the directions whose deadline was 17.1.2022.
7. **Order 37 Rule 1 Civil Procedure Rules** provides that a trustee may apply for the determination of a question affecting the rights or interest of the person claiming to be a **cestui quo trust** for the approval of a sale, and or administration of the trust.
8. Under that **Rule 3** thereof, a vendor or purchaser may also apply on a question affecting existence or validity of a contract involving a trust property.
9. Under **Rules 18, 19 and 20 of the Civil Procedure Rules**, the court is empowered to determine the question depending on the correctness and or sufficiency of the facts. See **Munyao Sila J in *In Re BMM [2016]***.
10. **Section 4, 11, 13, 17, 33, 34 and 41 and of the Trustee Act Cap 176 Laws of Kenya** provides that a trustee may exercise any powers on investment including sale or raising money through sale, maintenance of the property and its income, application of the income, vesting of

property once sold with leave of court and approval of the court under **Sections 56 and 59** thereof and **Order 37 Rule 1 and 3 of the Civil Procedure Rules**. The applicant has produced **P exh 1 and 2** which is clear she is the registered owner of the Trust Property.

11. Under **Section 24 of the Land Registration Act 2012**, the applicant has rights and privileges but which are subject to the rights of the minor under **Section 25 (2)** thereof.

12. Given the foregoing, I find that the application dated 2.11.2021 is properly before the court since the applicant has produced the requisite documents on ownership.

13. The second issue is whether the applicant is entitled to the orders sought.

14. The rights and duties of the trustee as indicated above are for the purposes of safeguarding the assets of the trust and or prudently utilizing the proceeds and income in furtherance of the trust including providing accounts and information to the beneficiaries and the court.

15. The court under **Section 56** of the **Act** retains the powers to authorize any specific investments.

16. In this case, the applicant has explained she needs to dispose a portion of the Trust Property so as to improve on the other properties and give the beneficiary quality education in line with **Article 53 of the Constitution and the Children Act**. See **Re Eunice Wanjeri Njenga [2013] eKLR**.

17. In my view, the proposal appears prudent and in the best interests of the minor, hence my finding that the application is merited.

18. I shall allow the originating summons as follows:-

1) That the applicant be and is hereby permitted to subdivide and sell a portion of not more than half a quarter of L.N. Abothuguchi/Kariene/5699.

2) The applicant shall apply not more than half of the proceeds of the sale of the trust property to improvements and investments on the remaining portion of the trust property, the payments of claims by and costs of the beneficiaries and to the legal costs of the said sale and this originating summons.

3) That the applicant shall apply the remainder of the proceeds of sale to the payment of school fees of the minor.

4) That the applicant shall render true account and file with court all sale agreements, valuation reports and transfers for the requisite approvals.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU

THIS 23RD DAY OF FEBRUARY, 2022

In presence of:

No appearance for parties.

Court Assistant Kananu

HON. C.K. NZILI

ELC JUDGE