



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI (NAIROBI LAW COURTS)

ENVIRONMENTAL & LAND CASE 296 OF 2013

**LINET WANJIRU KIGURU.....1ST
APPLICANT**

L.N.K (MINOR).....2ND APPLICANT

VERSUS

**DISTRICT LAND REGISTRAR, KAJIADO.....1ST
RESPONDENT**

EARLINK LIMITED.....2ND RESPONDENT

**IGNATIUS NGENYE KARIUKI.....3RD
RESPONDENT**

RULING

1. The matter before me is an Originating Summons dated 27/2/2013 brought under Section 47 of Land Registration Act and Order 37 Rule 1(f) and 2 of the Civil Procedure Rules. The prayers sought therein are as follows:

(a) That the Honourable Court be pleased to sanction the sale by the Applicants of Land Title Number KAJIADO/KISAJU/3613 and direct the District Land Registrar, Kajiado District Land Registry to register the transfer in favour of EALINK LIMITED of P.O. Box 22768 – 00100 Nairobi forthwith.

(b) That costs of those proceedings be borne by the Applicants.

2. The application is premised on the grounds set out on the face of the application and the Supporting Affidavit sworn by the 1st Applicant Linet Wanjiru Kiguru to the following effect:

- That the 1st Applicant is the mother of the 2nd Applicant, a minor born on 3/12/05.
- That the 1st Applicant bought the parcel of land identified as KAJIADO/KISAJU/3613 (hereinafter referred to as “the Kisaju Property”) in 2007 and registered it jointly in her name and in the name of the 2nd Applicant on 29/6/07 for their joint benefit.
- That sometime in December 2012, the 3rd Respondent offered to sell to the 1st Applicant a more prime parcel of land within Ngong Area identified as NGONG/NGONG/13602 (hereinafter referred to as

“the Ngong Property”) at a price of Ksh 22,000,000/=.

- That the 1st Applicant sourced for a buyer for the Kisaju Property and managed to secure the 2nd Respondent who agreed to purchase the Kisaju Property for Ksh 20,000,000/= which she intended to utilize towards payment of part of the purchase price of the Ngong Property.

- That the District Land Registrar, Kajiado has declined to transfer the Kisaju Property to the 2nd Respondent on account of Section 47(2) of the Land Registration Act which states as follows:

“Nothing in this Section enables a person under eighteen years of age to deal with land or any interest in land by virtue of such registration, and, if the Registrar knows a child has been registered the Registrar shall enter a registration accordingly.”

- That the full purchase price for the Kisaju Property which is supposed to be released to the 3rd Respondent as payment for the Ngong Property is currently being held by the parties’ advocates awaiting the Court Order sanctioning the sale and directing the 1st Respondent to register the transfer of the Kisaju Property in favour of the 2nd Respondent.

- That the transfer in respect of the Ngong Property has now been registered in favour of the Applicants and the 3rd Respondent requires his money to be released to him immediately.

- That the purchase of the Ngong Property represents an upgrade of the interest of the 2nd Applicant.

3. The 2nd Respondent wrote to the Court in their letter dated 11th March 2013 in which they stated that they have no objection to orders prayed for by the Applicants being granted and served upon them.

4. The 3rd Respondent, upon service on him of the application, also responded in writing dated 6/3/13 indicating that he has no objection to the orders prayed for being granted to the Applicants.

5. This is a clear cut case in which the Applicants seek to overcome a bar set out in Section 47(2) of the Land Registration Act which prohibits minors from dealing with land. This bar can only be overcome by issuance of a Court Order authorizing such a land transaction. In the present case, we have the Applicants being a mother and her son who is a minor seeking to dispose off the Kisaju Property in order to purchase the Ngong Property. The Court finds that the proposed transaction does not in any way prejudice the interest of the 2nd Applicant in any way.

6. Accordingly, this Court allows the application and grants the prayers made therein.

DATED, SIGNED AND DELIVERED THIS 19TH DAY OF APRIL 2013.

**MARY M. GITUMBI
JUDGE**

In the presence of:

.....Advocate for the 1st and 2nd Plaintiff/Applicants

.....Advocate for the Defendant/Respondent

..... Court Clerk

MARY M. GITUMBI

JUDGE