



REPUBLIC OF KENYA



KENYA LAW
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**M’mbijiwe (Environment and Land Miscellaneous Application
20 of 2022) [2022] KEELC 4822 (KLR) (19 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 4822 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 20 OF 2022**

CK NZILI, J

SEPTEMBER 19, 2022

**IN THE MATTER OF SECTION 47(2) OF THE LAND REGISTRATION
ACT**

AND

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO REGISTER A
CHARGE OVER L.R NO. NKUENE/L-MIKUMBUNE/2396**

AND

**IN THE MATTER OF LINDAJAY MUTWIRI, BEN CARSON MUTWIRI
AND MAXWELL MUGAMBI (MINORS)**

**IN THE MATTER OF
CAROLYNE KANANA M’MBIJIWE APPLICANT**

RULING

1. Through an application dated June 27, 2022 the applicant who is a guardian and the next friend of the minors has asked the court under Order 37 of the *Civil Procedure Rules*, section 17 and 56 of the *Trustee Act* as read together with article 53 of the *Constitution* to authorize or grant a consent to charge LR No Nkuene/L-Mikumbune/2396 with the bank and in the alternative, allow the said property to be transferred to her to charge and develop it so that the income derived there from can be applied towards the upkeep or provision of the basic needs of the minors.
2. The application is supported by the grounds on its face, and the affidavits sworn by Carolyn Kanana M’Mbiijiwe on June 27, 2022 and July 18, 2022 respectively.
3. The reasons given are that the suit property was acquired by her late husband Raphael Mutwiri Mwiti as a commercial plot and registered jointly under her name and those of the minors. It is averred that



the applicant has approached Sidian Bank Ltd which is willing to extend a credit facility to finance the approved building plans subject to the property being offered as a collateral.

4. The applicant avers the minors and herself are also jointly registered as owners of another property namely LR No Nkuene/Kithunguri/2812 where she has established a permanent residence. She therefore states there shall be no prejudice if the suit property is charged and developed.
5. PW 1 adopted her two affidavits in support as her evidence in chief. She confirmed she has a marriage certificate but letters of administration for the estate of the deceased have not been sought and or obtained since her deceased husband left no estate under his name. The applicant produced copies of birth certificates for the three minors as P exh 1(a) (b) & (c), copy of a title deed for LR No Nkuene/L Mikumbune/2396 as p exh 3 (a) & (b), approval letter for development together with the building plans as P exh 4, 5 (a) – (d); bill of quantities as P exh (6), copy of a death certificate for her husband as P exh (7), fees structure for the two minors as P exh 8 (a) & (b), policy cover for the minors as P exh (9), receipts of fee payment as P exh (10) and a letter from Sidian Bank Ltd dated April 25, 2022 as P exh (11) respectively.
6. The applicant said the proposed building project is estimated to cost Kshs48,000,000/= as per the valuation report.
7. Section 47 of the Land Registration Act provides that a name of a minor under the age of 18 years may be entered in the register to enable the minor's interest to be held in trust and shall be registered under the name of the guardian. Subrule (2) forbids a minor from dealing with land or any interest in land by virtue of such a registration. The registrar is mandated to enter a restriction to safeguard the said interests.
8. The court has considered the originating summons, exhibits produced, submissions made by counsel for the applicant, the circumstances under which the properties were acquired and the explanation given for seeking to charge the property and the law. See Bennetah Mukimba Wafukho v Land Registrar TransNzoia & another; Jamii Cooperative Savings & Credit Society Ltd (Interested Party) [2019] eKLR.
9. The reasons given by the applicant appear genuine and convincing. There is however no draft charge and or consents attached to the application from the land control board. The applicant was given an opportunity by this court to file a supplementary affidavit to introduce the marriage certificate and a valuation report. This was done through a further affidavit sworn on July 27, 2022. The applicant has also not disclosed the cost of the intended transaction to enable this court determine all the issues relating to the matter from the approval mode of disbursement of the funds and the subsequent opening of a trust account for the intended income to be channeled therein in favour of the minors, since there exists a continuing trust.
10. The above notwithstanding the intentions of the applicant, are aimed at enhancing the best interests of the minors as provided under article 53 of the Constitution and the Children Act 2022. I am inclined to allow the application in terms of prayer No 2 & 4 only. Legal fees and costs for the whole transaction shall be deducted from the intended income of the suit property once developed. An account shall be opened in the names of the minors alongside the guardian so as to channel the income out of the property for and on behalf of the minor(s)

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT

THIS 19TH DAY OF SEPTEMBER, 2022



In presence of:

C/A: Kananu

Mwirigi for Munene for applicant

HON. C.K. NZILI

ELC JUDGE

