

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Miscellaneous Civil Suit 308 of 2009

IN THE MATTER OF: THE WAKF OF HAJI JIVRAJ MEGHJI

-AND-

IN THE MATTER OF: AN APPLICATION BY SULTAN PYRALI

MOLU for his appointment as
TRUSTEE OF the WAKF in respect of
Plot No. MOMBASA/BLOCK XXIV 69 in
place of SADAK HAJI JIVRAJ now
deceased

RULING

The applicant moved to Court by virtue of Order XXXVI rules 1 (g) and 2 (c) of the Civil Procedure Rules, and s. 3A of the Civil Procedure Act (Cap. 21, Laws of Kenya). He was seeking orders that (i) he be appointed as the trustee of the wakf of *Haji Jivraj Meghji*; (ii) he be allowed to transfer the named property of the wakf, Plot No. Mombasa/Block XXIV/69 to the registered trustees of the Federation of the Khoja Shia Itnasheri Jamaats of Africa as *per* the wishes of the legatee.

In the applicant's supporting affidavit he depones that the wakf was created by the late *Haji Jivraj Meghji* who died on 23rd June, 1928, for the advancement of religion and education, and for the relief of poverty among the Shia Itnasheri Mohamedan Community; that *Kassamali Haji Jivraj Meghji* the son of the said *Haji Jivraj Meghji* who was also the administrator of his estate, by deed dated 6th February, 1929 did consecrate the said wakf; that the said *Kassamali Haji Jivraj Meghji*, the last trustee of the said wakf, approached the Supreme Council of the Khoja Shia Itnasheri in 1992 to take over the administration of the wakf; that the house standing on the wakf property is now dilapidated, is dangerous, and cannot raise sufficient funds for the maintenance of the property; that the registered trustees of the Federation of the Khoja Shia Itnasheri Jimaats of Africa is desirous of constructing a modern building on the wakf property for the purpose of enhancing the purposes of the said wakf as *per* the will of the settlor; that the only surviving member of the family of the late *Haji Jivraj Meghji* is *Anwarali Mohamed Jaffer Kassamali*; that the said *Anwarali Mohamed Jaffer Kassamali* is not interested in being appointed a trustee of the wakf and is agreeable to the applicant's proposed appointment and to the transfer of the property as proposed in the application; and that the interest of justice would best be served by allowing the application herein.

The foregoing depositions were presented in Court, on behalf of the applicant, by learned counsel *Mr. Kiarie Kariuki*. The intent of the application is, in my opinion, straightforward, and it presents no difficulty.

Consequently, I allow the prayers contained in the Originating Summons of 25th June, 2009. Costs shall be in the cause.

DATED and DELIVERED at MOMBASA this 26th day of November, 2009.

J. B. OJWANG

JUDGE

Coram: *Ojwang, J.*

Court Clerk: *Ibrahim*

For the Applicant: *Mr. Kiarie Kariuki*