



REPUBLIC OF KENYA



KENYA LAW
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In re ALM and TTM (Minor) (Environment & Land Miscellaneous Case E006 of 2022) [2022] KEELC 13453 (KLR) (13 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13453 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ENVIRONMENT & LAND MISCELLANEOUS CASE E006 OF 2022

CG MBOGO, J

OCTOBER 13, 2022

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO REGISTER
A CHARGE OVER PROPERTY TITLE NO. CIS MARA/LEMOK/5035**

AND

IN THE MATTER OF ALM AND TTM (MINOR)

RULING

1. What is before this court for determination is a notice of motion application dated July 6, 2022 expressed to be brought under section 27 of the [Land Act](#) and section 47 of the [Land Registration Act](#) seeking the following orders: -
 1. That the honourable court be pleased to grant leave to the applicant to use the title document for Cis Mara/Lemek/5035 as security for loan.
 2. That the honourable court be pleased to grant leave to the Chief Land Registrar to register a charge over the said parcel of land in favour of Bank of Africa.
 3. The application is premised on the grounds that the subject land is registered in the name of Sein Enole Murero, Amos Leyian Murero and Timothy Tupenet Murero (minor) and that the applicant intends to use the title of the subject land as collateral for a loan to pay school fees for her sons.
 4. The application is supported by the supporting affidavit of Daniel Saitoti Murero and Sein Enole Murero sworn on even date. Daniel Saitoti Murero deposed that he is the father of the minor and that he gifted the subject land to his wife-Sein Enole Murero and his two children-the minor herein and Amos Leyian Murero which is registered in their names pursuant to the title deed dated May 31, 2019.He further deposed that his wife has applied for a loan facility from Bank of Africa against the said title deed and intends to use the loan to pay school fees for his sons and therefore does not object if the title deed is used as a security for loan and that no prejudice will be occasioned upon anyone if the prayers sought are granted.



5. The application is also supported by the supporting affidavit of Sein Enole Murero sworn on even date and who deposed that she is the legal wife to Daniel Saitoti Murero and that her husband gifted her and her two sons the subject land which is registered in their names. The applicant further deposed that Amos Leyian Murero has attained the age of majority but is yet to obtain a national identity card while Timothy Tupenet Murero is a minor and that she has applied for a loan facility from Bank of Africa against the said title deed as collateral which requires consent from this honourable court to charge the property as one of the registered persons is a minor and cannot therefore execute the consent and charge documents. Further that her husband has no objection to using the title deed to obtain a loan facility in order to pay school fees for the school going children.
6. The applicant filed written submissions dated July 22, 2022. The applicant raised one issue for determination which is whether this court has jurisdiction to give consent to, or allow the applicant to use the title of the suit land which is in her joint name and that of her sons and one of whom is a minor, as collateral for a loan. The applicant relied on section 27 of the [Land Act](#) and section 47 of the [Land Registration Act](#) and submitted that the subject land is registered in her name and that of her two children and that there would be no issue if the parties were adults but since one of the proprietors is a minor, there is need for a consent by this court to enable the applicant charge the said subject land. The applicant relied on the case of [Halima Abdinoor Hassan & 3 others versus Corporate Insurance Company Limited](#) [2015] eKLR. The applicant further submitted that though her husband voluntarily included the minor as a co-proprietor over the suit land upon registration as set out under section 25 of the [Land Registration Act](#), they may have the land partitioned and each to be registered as proprietor of their specific portions as provided for under section 94 of the [Land Registration Act](#) but that option is not viable since a minor is involved and cannot execute the documents necessary for subdivision of the subject land. The applicant further submitted that she intends to use the loan amount to pay school fees and arrears and the remaining amount to purchase farm inputs and that the produce from the farm apart from feeding the family will be sold in order to ensure that the children are well taken care of since the applicant and her husband are not in any formal employment.
7. I have carefully analysed and considered the application, the annexures and the written submissions and the issue for determination is whether the applicant is entitled to the orders sought.
8. Section 27 of the [Land Act](#) provides as follows: - “A child shall be capable of holding title to land through a trustee and such child shall be in the same position as an adult with regard to the child’s liability and obligations to the land.”
9. Section 47 of the [Land Registration Act](#) provides as follows: -
 - “(1) The name of a person under the age of eighteen 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 either on first registration or as a transferee or on transmission.
 - (2) 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 restriction accordingly.



(3) If a disposition by a minor whose minority has not been disclosed to the Registrar has been registered, that disposition may not be set aside only on the grounds of minority.”

10. I have looked at the pleadings and the annexures and I do note that the applicant is seeking a loan facility of Kshs. 500,000/- from Bank of Africa vide a letter of offer dated May 4, 2022. In the said letter of offer, it is indicated that the purpose of the said facility shall be utilized for the working capital requirements and farm input requirements of the borrower. It was the applicant’s deposition that she will use the said amounts to cater for school fees of the minors. The applicant annexed copies of school term reports of St Peter Elite and a School Fees balance notification from Utumishi Academy. From the annexed documents, this court is not persuaded by the school documents sought to be relied on by the applicant. This court is not persuaded whether the minors attend the said schools, at least a letter of admission would be sufficient. In addition, the purpose for the loan application and the averments made by the applicant in her affidavit are at variance. The former is to the effect that the facility would be utilized to purchase farm inputs and for working capital requirements. The latter refers to payment of school fees arrears.
11. Of major concern to this court, is the submission by the applicant that together with her husband, they are not in any formal employment. This court is left to wonder, in the event that the applicant is unable to repay the loan, what would be left for the minors. Whereas this court is mindful of the import of section 27 of the *Land Act*, of paramount importance is the interests of the child and therefore this court is hesitant in giving consent to charge a property that is being held in trust for a minor. In the unfortunate event that the applicant is unable to repay the loan and the property is sold, the minors will have no property.
12. I am of the view that the subject land needs to remain undisturbed until the minors are of age to enable them make a sound decision as to the manner of dealings of the same.
13. Arising from the above, I do find that it would not be in the best interest of the minors to grant the orders sought. The notice of motion application dated July 6, 2022 is dismissed with no orders as to costs. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 13TH DAY OF OCTOBER, 2022.

HON. MBOGO C.G.

JUDGE

13/10/2022

In the presence of:-

CA:T.Chuma

