



M v Land Registrar Kwale (Miscellaneous Application E005 of 2023) [2024] KEELC 4199 (KLR) (9 April 2024) (Ruling)

Neutral citation: [2024] KEELC 4199 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
MISCELLANEOUS APPLICATION E005 OF 2023**

AE DENA, J

APRIL 9, 2024

BETWEEN

N N M APPLICANT

AND

LAND REGISTRAR KWALE INTERESTED PARTY

RULING

1. This Ruling is the subject of the Notice of Motion application dated 24th October 2023. It is brought under the provisions of Order 51 rule 1 of the Civil Procedure Rules 2010; Section 3A of Civil Procedure Act Cap 21 Laws of Kenya; Section 27, 43 and 150 of Land Act No. 6 of 2012 Laws of Kenya; Section 13 Environment and Land Court Act No. 19 of 2011 Laws of Kenya; and Section 8, 11, 12, 13, 16, 17 and 30 of the Children Act, No. 29 of 2022 Laws of Kenya and all other Enabling Laws.
2. The Applicant seeks the following verbatim orders; -
 1. That this honourable court be pleased to appoint N N M as a trustee of M H K's 0.42 Ha share in Kwale/XXX/XXX.
 2. That this honourable court be pleased to confer upon N N M, the trustee herein with the power to sell, transfer, charge, lease, put up for sale, advertise, receive money and sign all transfer documents, deeds, consents, agreements and any other document in her name and/or in the name of M H K and/or hold and generally deal with M H K's 0.42 Ha share in Kwale/XXX/XXX.
 3. Cost of this application be provided for.
3. The application is supported by the affidavit sworn by N N M who depones that she is the biological mother to M H K who is a minor and swears the affidavit in his behalf. That the family inherited two plots of land from her deceased husband together with other step children belonging to the deceased.



4. It is deponed that during adjudication of the Tsunza area, the 2 plots became registered under the name of M H K because his older step brother, Said K, gave his name as a “representative” of the “Boma la mama M”. The same were registered as follows;-
 - a. Kwale/XXX/XXX is jointly registered under the name of M H K and 2 step-brothers S H K and K C H in 1/3 equal shares. A copy of the title was attached.
 - b. Kwale/###/### is registered entirely to M H K.
5. It is averred that the family has lived in abject poverty and is desirous of selling their share of plot Kwale/XXX/XXX to one Francis Ngau Musyoki with whom they have entered into a purchase and sale agreement for Ksh. 1,800,000. That part half of the money is to be used towards construction of their desired new stone family home under the supervision of the said Francis Ngau Musyoki and the Applicant. The remainder will be used to cater for educational, social, psychological and other needs of all the children. That the Applicant has no other source of income.
6. The deponent urges that it is only fair for this application to be allowed which will enable the family transfer their share of Kwale/XXX/XXX to the Francis Ngau Musyoki who has already advanced Kshs. 200,000/= to the family and has been accommodative enough to assist the said family realize a safe house and get funds for future education, clothing, health care and other needs.

Determination

7. I have considered the application and the main issue for determination is whether the orders sought should be granted.
8. I have seen the birth certificate for M H K and which reflects his date of birth as 16/06/2008 meaning he is a minor now aged 16 years of age. I have also noted there are already existing arrangements between Francis Ngau Musyoki and the applicant for the sale of the property and that the family has already benefited from the said arrangements. I have also noted the circumstances under which the applicant and her family live in from the photographs annexed.
9. It is not clear when the above arrangements were entered into with the said Francis Ngau Musyoki Except that a tranche of Kshs. 50,000/= was received as late as October 2023. The said M H K is now 16 years and is left with only a residue of two years to attain majority age. The court did not see any justification for disposal of the property two years to the year he is to attain majority age and why it cannot await the time when he becomes 18 years old. I have had the benefit of looking at the provisions of Sections 8, 11, 12, 13, 16, 17, 18 of the *Children's Act* 2022 and I find most of them misplaced to the extent that they refer to parental care which in my view is different from trusteeship, social security and basic education which accrue from the government of Kenya, inheritance of property when there is no contention as to the 1/3 portion held by the minor.
10. Indeed it is deponed the elder brother nominated him to be registered on behalf of his family with the knowledge their father was already deceased. As it is now M H K is also a beneficiary and has no capacity to reach an informed decision as to whether he wants the land sold for the benefit of the family. This far the family has survived and it is my belief they will survive for the next 2 years until the said M H K will be able to make an independent decision on the matter. This would be in his best interests. I refuse as a court to be used to sanitise the arrangements that have already taken off.
11. The upshot of the foregoing is that the application is dismissed. I shall not make any orders as to costs. It is so ordered.



RULING DATED, AND DELIVERED THIS 9TH DAY OF APRIL 2024.

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A.E DENA

JUDGE

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of: -

Ms. Wasike holding brief for Mr. Musyimi for the Applicant

No appearance for Land Registrar Kwale the Interested Party

Mr. Daniel Disii - Court Assistant

