



REPUBLIC OF KENYA



**In re HK As the Mother and Trustee of JK - Minor (Applicant) (Environment and Land
Miscellaneous Application E009 of 2024) [2024] KEELC 3812 (KLR) (8 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 3812 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E009 OF 2024**

CK NZILI, J

MAY 8, 2024

JUDGMENT

1. The applicant moved this court by an application dated 28.2.2024 seeking to be allowed to subdivide LR No Ntimbiri/Abonyai/568 into six portions and to dispose of a portion measuring 0.046 Ha to a third party.
2. Further, the applicant prays that one of the portions be registered in the name of a minor, Joy Kanana, and herself as a trustee.
3. Lastly, the applicant prays that she be allowed to execute as the guardian and trustee of the minor all documents necessary for the successful sale and transfer of the portion to be disposed of.
4. The application is supported by an affidavit sworn by Harriet Kanyua, the mother and trustee of the minor. It is averred that the suit land is registered in the name of the mother and the minor, which they inherited from the late husband and father, Jason Mwenda M'Mwithimbu.
5. The deponent avers that she lives on the suit land with her four children, with the minor being 11 years old, whom she single-handedly supports through her timber business.
6. Again, the deponent avers that her business is almost collapsing and needs capital funding in order to boost its sales volumes for the sustenance of the growing needs of the family.
7. The deponent avers that the minor is in school, while the other daughter is due to join university. To this end, the applicant avers that they have jointly agreed to subdivide, sell, and transfer a portion to a third party, which is already identified, and part of the proceeds would be used in clearing school fees, catering for family needs, and a detailed account rendered to the court.
8. The applicant also avers that the remainder of the property would be subdivided and registered in each family member's name as a beneficiary. The applicant avers that it was in the best interest of the minor to grant the orders sought.
9. Following directions issued on 22.2.2024, this matter proceeded through oral evidence of Harriet Kanyua and Mercy Kendi, who testified as PW1 & PW2. After adopting her affidavit as her evidence in



- chief, PW1 told the court that she is the wife of the late Jason Mwenda M’Mwithimbu, who passed on 6.11.2018. She said her late husband left behind four children, namely Erick Kiriinya, aged 26 years; Ronny Kimathi, aged 29 years; Mercy Kendi, aged 20 years; and Joy Kanana, aged 12 years, as per birth certificates and death certificate produced as P. Exh No 1-6 respectively.
10. PW1 told the court that her late husband had acquired LR No Nhtimbiri/Abonyai/568, which they registered under their names on 22.7.2022. She produced a copy of the title deed as P. Exh No (7).
 11. PW1 said that the minor was in grade 6, and Mercy Kendi is due to join university and will require school fees hence the reason she wanted leave of court to sell 1/8 acre of the suit property to cater for the school fees. PW1 further told the court that her late husband also left behind another parcel of land in Nanyuki. No valuation report was produced for the portion she intended to dispose of.
 12. This application is premised on Sections 27 of the Land Act, 47 of the Land Registration Act, and 56 of the Trustee Act. Co-proprietorship or co-tenancy is governed by Section 91 of the Land Registration Act. The title deed produced herein does not specify the nature of each proprietor’s rights. The presumption in law is that the property is held in common in equal shares. It means each has an undivided share of the whole land. See *Moses Bii vs. Kericho District & another* (2015) eKLR.
 13. Any dealings with the property, therefore, require consent in writing from the co-owner(s), which under Section 91 (5) shall not be unreasonably withheld. See in *Re. RMM vs EVW Land Misc Application E003 of 2022 KELC 2584* is 6th July 2022 (Ruling).
 14. As to severance, joint tenants, not being trustees, may execute an instrument in the prescribed form, signifying that they agree to sever the joining ownership. Tenants in common have a right to partition the land for each to be registered as a proprietor of their specific portions under Section 93 of the Act.
 15. Other than the exhibits produced by PW1 and her pleadings, there is no evidence that the two elder sons have consented to and agreed on the severance, portions and disposal of a portion of the suit land. The applicant was given an opportunity to avail the two sons before the court. Unfortunately, they did not show up even after the matter was adjourned.
 16. Under Section 47 of the Land Registration Act a minor may hold title to land through a trustee while under Section 47 thereof provides that the name of a person under the age of 18 years may be entered in the register.
 17. In this matter, the minor, through the applicant, has indicated the circumstances under which the land came under joint ownership, following the death of her late father and husband, respectively. The co-tenants have not disputed those facts.
 18. There is no dispute that Joy Kanana is a minor whose trustee is her mother, Harriet Kanyua. Joy Kanana and Mercy Kendi, as children of PW1, are entitled to constitutional rights to education, care and protection from their guardian. The mother, as a trustee under Section 56 of the Trustee Act, seeks to sever and allowed to be to dispose of part of the land for the education of the minor and to register the other portion individually in favor of not only the minor but the rest of the beneficiaries.
 19. Order 37 of the Civil Procedure Rules and Section 56 of the Trustee Act grant this court powers to approve a sale of trust property. The applicant has expressed willingness to abide by any just orders and conditions that this court may grant in allowing the application. Sections 13 & 17 of the Trustee Act and Section 24 of the Land Registration Act, grant the applicant as a trustee the right to dispose of trust property in order to raise money for the furtherance of the trust. The court has powers to allow, vary, or issue orders in furtherance of a trust property management or administration once an application is made by the trustee or any person beneficially interested in the trust property.



20. Section 25 (2) of the *Land Registration Act* provides that the rights of a proprietor of land provided under Sections 24 & 25 of the Act shall not be taken to relieve a proprietor from any duty or obligation to which the person is subject as a trustee. The powers, duties, and obligations of trustees are laid out in the Trustees Act and the doctrines of equity. Trustees are under a duty to maintain equality between beneficiaries and to provide accounts and information to the beneficiaries.
21. In this matter, the best interests of the minor under the *Constitution* have been invoked. In law and equity, the court is duty-bound to ensure that the rights of Joy Kanana, a minor, and Mercy Kendi are safeguarded and protected.
22. Consequently, I now permit and empower the applicant to subdivide and dispose of a portion of 0.046 ha and register the other portions as proposed under her name and that of the minor as well as the rest of the beneficiaries. The applicant is authorized to apply the proceeds of the sale to educate the minor and her sister, Mercy Kendi. Any balance of the proceeds of the sale thereof shall be applied in the family business for the sustenance of the minor.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON
THIS 8TH DAY OF MAY, 2024**

HON. C K NZILI

JUDGE

In presence of

C.A Kananu

Miss Gacheri Mwiti for the applicant

