



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC MISC. APPLICATION NO. E023 Of 2021

IN THE MATTER OF LEAVE TO SELL AND TRANSFER

L.R NO. ABOTHUGUCHI/RUIGA/xxxx

AND

IN THE MATTER OF SECITONS 17, 18, 56 & 57 OF THE

TRUSTEES ACT CAP 167 LAWS OF KENYA ACT

RGK.....APPLICANT

JUDGMENT

1. The exparte applicant has brought an application dated 27.9.2021 seeking for leave to dispose of parcel no. Abothuguchi/Ruiga/xxxx which is registered in her name and that of the minor BJ aged 5 years so as to invest the income for and on behalf of the applicant and the minor.
2. The said application is supported by an affidavit sworn by the applicant attached to which are annexures marked R9 1-14. The exparte applicant also testified in court in support of her application after which written submissions were filed dated 27.9.2021.
3. The grounds upon which the application is based are that the property in issue is jointly owned by both the applicant and the minor that there is some other commercial property namely L.R No. Ntima/Igoki/xxxx the applicant is developing but has run into loan arrears hence requires some capital; the expected income from sale shall be defray loan arrears as well as ensure completion of the commercial complex which is expected to generate substantial monthly rental income which shall be channeled towards the welfare of both parties and other two siblings.
4. The power to sell trust property is conferred upon an applicant as a trustee by Section 13 of Trustee Act cap 167 Laws of Kenya. Sections 17, 56, 57 and 65 thereof as read together with order 37 rule 1 of the civil procedure rules empowers the court authorize dealings with trust property, such as sale and direct the manner in which the capital or income is to be utilized by the trustee.
5. In the instant application, the applicant has given the circumstances and reasons for the proposed sale and use to which the income shall be channeled.
6. In my view the intended transaction is in the best interests of the minor as provided by Article 53 of the constitution as read together with section 4 (1) & (2) of the Children Act.
7. In **Re Eunice Wanjeri Njenga (2013) eKLR** the court stated that under sections 25 (2) of the Land Registration Act an absolute proprietor's rights to dispose of land shall not relieve such a proprietor from any duty or obligation to which the person is subject to as a trustee including accountability and disclosure of all relevant information. The applicant herein has met the threshold above.
8. The application is therefore allowed. This court directs the minor's name to be included as one of the registered owners of L.R Ntima/Igoki/xxxx at the lands office and the applicant to furnish the court with appropriate documentation to that effect within 120 days from the date hereof, as per Section 4 (1) of the Trustee Act.
9. Costs of and incidental to the valuation transfer and this application shall be realized from the sale as provided under section 59 of the Trustee Act. Upon sale the balance of the proceeds shall be re-invested for and on behalf of the minor for his future benefit as proposed.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 29TH DAY OF SEPTEMBER, 2021 IN PRESENCE OF:

C/A: Kananu

Mwirigi Kaburu for the applicant

HON. C.K NZILI

ELC JUDGE