



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC MISC. APPLICATION NO. E027 OF 2021**

**IN THE MATTER OF:**

**SECTION 56 OF THE TRUSTEES ACT, CHAPTER 176**

**AND**

**IN THE MATTER OF**

**TRANSFER OF PROPERTIES**

**AND**

**IN THE MATTER OF**

**L.R. NO. xxxx, FLAT NO. xx ON L.R. NO. xxxx AND FLAT NO. xx ON L.R. NO. xxxx**

**AND**

**IN THE MATTER OF KSN AND RS (MINORS)**

**DH LTD.....APPLICANT**

**RULING**

**INTRODUCTION**

1. Vide Chamber Summons Application dated 19<sup>th</sup> February 2021, the Applicant sought the following Reliefs;

i. *The Honorable Court be pleased to allow the Applicant to transfer the properties namely L.R. No. xxxx, located in Karen, registered in the name of KSN (Minor), flat number xx, on L.R. No. xxxx, along Kirichwa Road, registered in the name of SSN and RSN (Minors) and flat number xx on L.R. No. 2/643, along Kirichwa Road, registered in the name of RSN (Minor).*

ii. *Costs shall be in the cause.*

2. The subject Application is based and/or premised on the grounds enumerated at the foot thereof and same is further supported by the affidavit of SAN and SSN, sworn on the 19<sup>th</sup> of February 2021, respectively.

**DEPOSITIONS ON BEHALF OF THE APPLICANT**

3. Vide the Supporting Affidavit sworn by SAN, same has averred as hereunder.

4. The Deponent herein is the biological father of KSN (Minor), RSN (Minor) and SSN, respectively.

5. The Deponent has further averred that same is the one who purchased and/or acquired the suit properties, but caused the properties to be registered in the names of the minors. For clarity, the Deponent avers that the suit properties herein were for the benefit of the minors.

6. On the other hand, the Deponent has further averred that though the suit properties were for the benefit of the minors, same has continued to superintend the management of the suit properties by virtue of being the trustee of the minors.

7. Be that as it may, the Deponent has now averred that he has since incorporated the Applicant company and upon the incorporation of the company, himself and the minors herein are shareholders in the Applicant company.

8. Besides the Deponent has further averred that the Applicant company herein was incorporated to bring together and thereafter consolidate the assets of the family, for purposes of ease of management and to ensure that if the family requires security, such security can be offered and/or availed without undue legal technicalities.

9. Finally, the deponent has averred that the intended transfer of the suit properties to the Applicant company, is not meant to alienate and/or deprive the minors of their rights and/or interest in the suit properties.

10. To the contrary, the Deponent has averred that the transfer and registration of the suit properties in the name of the Applicant company is to protect and preserve the suit properties and to ensure the minors continue to benefit from same, as was hitherto intended, when the suit properties were registered in their names.

### **SUBMISSIONS**

11. The subject Application came up on the 11<sup>th</sup> of November 2021, on which date the Court ordered that the Application be canvassed and/or disposed of by way of written submissions, even though the Application is by law ex-parte.

12. Pursuant to and in line with the directions of the Court, the Applicant herein proceeded to and crafted submissions which were then after filed and/or lodged with the Court on the 25<sup>th</sup> of November 2021. For clarity, the said submissions are however dated 12<sup>th</sup> November 2021.

### **ISSUES FOR DETERMINATION**

13. Having reviewed the Chamber Summons Application dated the 19<sup>th</sup> of February 2021, the affidavits in support thereof and the submissions filed by and on behalf of the Applicant, I find and hold that there is only issue for determination as hereunder;

*i. Whether the Honorable Court can sanction the transfer and registration of the suit properties from the names of the minors to and/or in favor of the Applicant company and if so, whether such a transfer shall be in the interest of the minors.*

### **ANALYSIS AND DETERMINATION**

#### **Issue Number One**

**Whether the Honorable Court can sanction the transfer and registration of the suit properties from the names of the minors to and/or in favor of the Applicant company and if so, whether such a transfer shall be in the interest of the minors.**

14. Before venturing to address the issue raised herein, it is appropriate to take cognizance of the provisions of **Section 56 of the Trustees Act, Chapter 167, Laws of Kenya**, which provides as hereunder;

*“56.Power of court to authorize dealings with trust property*

*(1)Where, in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the court expedient, but cannot be effected by reason of the absence of a power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees either generally or in any particular instance the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit, and may direct in what manner any money authorized to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.*

*(2)The court may, from time to time, rescind or vary an order made under this section, or may make any new or further order.*

*(3)An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.”*

15. From the foregoing provisions, it is apparent and evident that the Court is vested with powers to superintend the management of properties that are held in trust, by trustees and to ensure that the trustees manage and/or execute their mandate in such a manner that benefits the beneficiaries of the trust and also to ensure that the trustees act in accordance with the law.

16. On the other hand, it is also evident from the foregoing paragraph that when the trustee or any other person interested under the trust is desirous to take any action and/or disposition of the trust property, such a trustee and/or person beneficially interested in the trust is obliged to make an Application to the Court, and upon such Application, the Court is enjoined to consider same and authenticate whether the intended action is for the interest of the beneficiaries.

17. In respect of the subject matter, the deponent of the Supporting Affidavit has averred that same is the one who purchased and/or bought the suit properties and registered same in the names of the minors for and on account of their benefit thereof.

18. It has further been stated by the deponent that same has since proceeded to and incorporated the Applicant company, which is meant to be the family vehicle for purposes of consolidating and managing the assets and by extension the affairs of the family. In this regard, the deponent has averred that the bringing together of the assets of the family under the Applicant company, shall also provide security to the family when the family desires to procure any facility.

19. I have considered the circumstances upon which the subject Application has been made and the purpose intended to be achieved, and I am convinced that the intended transfer and registration of the suit properties in the name of the Applicant company, is not meant to alienate and/or dispose of the suit property, but is otherwise intended to consolidate the assets of the family and place same under one roof, namely the Applicant company, for ease of management.

20. In any event, I have also found and held that the minors, for whose benefit the suit properties were acquired, and who were thus obliged to benefit therefrom, are also shareholders and/or subscribers in the Applicant company. In this regard, the Applicant company is thus truly a family company.

21. Owing to the foregoing, there is no basis to disbelieve that the Applicant company herein, shall actually oversee and/or take care of the suit properties and ensure that the resultant proceeds and/or income arising therefrom are used and/or utilized for the benefit and livelihood of the minors.

22. In the premises, I find and hold that the intended purpose, namely, the transfer and registration of the suit properties in favor of the Applicant company, for purposes of consolidating the assets of the family and thus bringing same under one management roof, is in line with the values encapsulated vide the provisions of Section 56 of the Trustees Act.

23. Owing to the foregoing, I am minded to allow the Application, and in particular to grant the liberty for the transfer and registration of the suit properties, in the name of the Applicant company, who shall continue to hold same in trust and for the benefit of the named minors,

24. pending attainment of the majority age during which period, the minors shall have a right to elect whether to proceed with the Applicant as the trustee or otherwise.

25. Before terminating the subject Ruling, I beg to refer to and subscribe to the views of the Court as captured in the decision in the case of **Re Eunice Wanjeri Njenga [2013] eKLR**, where the honorable Court stated as hereunder;

*“In summary the general duties of trustees in relation to the trust property are to safeguard the assets of the trust, to invest any trust money in his or her hands, and to distribute the assets to the beneficiaries and satisfy any claims of the beneficiaries. With relation to the beneficiaries, trustees are under a duty to maintain equality between beneficiaries and to provide accounts and information to the beneficiaries. Section 56 of the Trustees Act cited in the foregoing also gives this court power to authorize specific investments upon application by a trustee, and together with section 59 permits this court to order that costs of a sale and application to the court be met from the proceeds of sale of a trust property.”*

26. Be that as it may, it must be pointed out that though the Applicant company herein has been granted the permission and/or liberty to transfer the suit properties in her own name, such transfer and registration shall not extinguish the existence of trust in favor of the minors.

27. For clarity, the powers of the Applicant company in dealing with the suit properties, shall be circumscribed by the provisions of **Section 25(2) of the Land Registration Act, 2012**.

#### **FINAL DISPOSITION**

28. Having reached the foregoing conclusion, what thus remains outstanding is the pronouncement of the final order.

29. In the premises, I find and hold that the Chamber Summons Application dated the **19<sup>th</sup> of February 2021 be and is hereby allowed.**

30. Consequently, an order be and is hereby issued to and in favor of the Applicant to transfer and register in her name the properties namely, **L.R. No. xxxx, located in Karen, registered in the name of Kran Schon Noorani (Minor), flat number B2, on L.R. No. xxxx, along Kirichwa Road, registered in the name of SSN and RSN(Minors) and flat number xx on L.R. No. xxx, along Kirichwa Road, registered in the name of RSN (Minor).**

31. There shall be no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2<sup>ND</sup> DAY OF DECEMBER 2021.**

**HON. JUSTICE OGUTTU MBOYA**

**JUDGE**

**ENVIRONMENT AND LAND COURT.**

**MILIMANI.**

In the Presence of;

**June Nafula Court Assistant**

**Mr.Munyoki Jnr. For the Applicant**