



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAROK

SUCCESSION CAUSE NO. 9 OF 2018

IN THE ESTATE OF JSS (DECEASED)

PERMISSION TO SELL PROPERTY BY A SPOUSE NES.....APPLICANT

RULING

1. Pursuant to the provisions of section 37 of the Law of Succession Act (Cap 160) Laws of Kenya and all other enabling provisions of the law, the applicant through her *ex parte* chamber summons has applied for the following major orders.

1) *spent*.

2) an order that the applicant be granted permission to sell land parcel No. Cis-Mara/Koiyaki Dagurueti/[....] ; which was bequeathed to her and her children (minors) in the estate of JSS Alias JSOS. The certificate of the confirmation of grant that was issued by this court [Bwonwong'a, J] on 4th April 2019 in her favour, in which she was appointed a trustee in her own behalf and on behalf of the three minors.

2. The application is supported by eleven grounds that are set out in the *parte ex* chamber summons dated 16/9/2020. The major grounds are as follows. The applicant is the spouse of the deceased (JSS) and is blessed with three children, who are minors. Pursuant to the certificate of confirmation of grant the applicant inherited land parcel No. Cis-Mara/Koiyaki Dagurueti/[....], amongst other parcels of land, which she holds on trust on her own behalf and on behalf of the three children. This parcel of land is situate in the wild life conservancy known as Mara North Conservancy and is not suitable for habitation. The applicant and her children are currently residing on land parcel No. Cis-Mara/Koiyaki Dagurueti/[....], which is jointly registered in the names of her step-son LS and KS, the latter being her step-brother in law.

3. Furthermore, the said LS and KS have offered to sell to her land parcel No. Cis-Mara/Koiyaki Dagurueti/[....], wherein she has lived for the last five years.

4. The applicant has since secured an interested purchaser for her land parcel No. Cis-Mara/Koiyaki Dagurueti/[....], and seeks the approval of this court to sell the said land in order to raise money to enable her purchase land parcel No. Cis-Mara/Koiyaki Dagurueti/[....]. The applicant and the interested purchaser have since signed a sale agreement dated 24th August 2020, which has a completion date of 90 days from the signing of the agreement or such other time as may be agreed between the parties.

5. Furthermore, the applicant has already received a sum of shs 500,000/=, being part payment of the purchase money, which currently is held by her advocates as stakeholder pending approval by this court. The application is solely brought for the benefit of her children; since they risk being evicted by LS and KS, the latter being the owners of land parcel No. Cis-Mara/Koiyaki Dagurueti/[....]. The applicant has since entered into a sale agreement with the said LS and KS for the sale to her of land parcel No. Cis-Mara/Koiyaki Dagurueti/[....].

6. The applicant has deposed to a 14 paragraphs supporting affidavit, in which she has deposed to the same averments that are set out in the *ex parte* chamber summons, which I find unnecessary to set out here.

The applicable law

7. The law governing this application is clearly set out in section 37 of the Law of Succession Act; which provides that: “A surviving spouse entitled to a life interest under the provisions of section 35 or 36 of this Act, with the consent of all co-trustees and all children of full age, or with the consent of the court shall, during the period of the life interest, sell any of the property subject to that interest if it necessary for his own maintenance:

Provided that, in the case of immovable property, the exercise of that power shall always be subject to the consent of the court.”

8. Furthermore, the 2010 Constitution of Kenya in article 53 (2) mandatorily requires that in every matter concerning children, their best interests are of paramount importance and must be taken into account. In the instant application the proprietary rights of the three children has to be taken into account; since they are beneficiaries of the subject parcel No. Cis-Mara/Koiyaki Dagurueti/[...].

9. In the light of the applicable law and the affidavit evidence of the applicant, who is their mother, I find that that the parcel of land they now occupy namely land parcel No. Cis-Mara/Koiyaki Dagurueti/[...] is the property of LS and KS, wherein they are faced with eviction. I further find that land parcel No. Cis-Mara/Koiyaki Dagurueti/[...] within the wild life conservancy known as Mara North Conservancy is not suitable for habitation. It is this parcel that the applicant intends to sell to enable her raise money to purchase land parcel No. Cis-Mara/Koiyaki Dagurueti/[...] for the benefit of the three children and herself.

10. In the premises, I find that the intended sale of the subject land and the purchase of land parcel No. Cis-Mara/Koiyaki Dagurueti/[...] is in the best interests of the three children as required by article 53 of the 2010 Constitution of Kenya; with the result that the application succeeds in its entirety and the consent of this court as the upper guardian of the three children is hereby granted in terms of section 37 of the Law of Succession Act.

Ruling signed, dated and delivered in open court at Narok this 5th day of October 2020 in the presence of Mr. Kiptoo for the applicant.

J. M. BWONWONG'A

JUDGE

5/10/2020