



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

MISC. CIVIL APPLICATION NO. 102 OF 2019 (O.S)

IN THE MATTER OF THE ARTICLES 22, 23 & 53 OF CONSTITUTION OF KENYA 2010

IN THE TRUSTEES ACT CAP 167

AND

IN THE MATTER OF THE CHILDREN'S ACT, NO. 8 OF 2001

AND

IN THE MATTER OF SOLIDARITY CHILD RESCUE CENTRE

AND

IN THE MATTER OF AN APPLICATION FOR APPOINTMENT OF A TRUSTEE

AGGREY NYONGESA KERE (on behalf of Solidarity Child Rescue Centre).....APPLICANT

RULING

1. The applicant filed the present originating summons dated 19th June 2019 seeking orders that the honourable court appoints Joshua Kimaita Kirera as a trustee of Solidarity Child Rescue Centre. The application was supported by the applicant's affidavit dated 19th June 2019. It was his case that he was the founder and sole trustee of Solidarity Child Rescue Centre (Children's Home) situated at Kasarani in Nairobi. The Centre was registered by the Registrar of Societies on 2nd September 1997. It was incorporated on 22nd July 1999 as a trust. Prior to this, and subsequent to the registration, Ms. Christina Ruth Eglinton (a foreigner) was their main sponsor. At the said registration he made her a trustee along with Isaac Musomba Mutuku and Judith Eleanor Collins Presbitero. Over a time Judith Eleanor Collins Presbitero and Isaac Musomba Mutuku resigned as trustees. Ms. Christina Ruth Eglinton on the other hand ceased to be a trustee by operation of the law as she was out of the country for a period exceeding one year between 2014 and 2016. The operation of the Children's Home stands compromised as the number of trustees should not fall below two. This is the reason why the applicant wants the court to appoint Joshua Kimata Kirera as a second trustee. If this is not done, he stated, the Children's Home will be closed and that will affect the interests of the children in the Home.
2. The application and the hearing notice of 3rd July 2019 were served on the Attorney General and the Director of Children Services but no response was filed.
3. The applicant annexed the Certificate of Incorporation under the **Trustee (Perpetual Succession) Act (Cap 164)** and the Solidarity Child Rescue Centre Registered Trustees Constitution. Under these instruments:-

“The power of appointing new Trustees hereof shall be vested in the surviving or continuing Trustees for the time being (excluding any retiring Trustees).....”

4. This application was made under the **Trustees Act, Cap 167**. Under **section 37** of the **Act**, the power of appointing new or additional trustees is vested in the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust. In the instant case, that power is vested in the applicant. The court may only be called in to appoint (under **section 42** of the **Act**), if it is found inexpedient, difficult or impracticable to do so without the assistance of the court. The applicant did not swear or state that it has become inexpedient, difficult or impracticable for him to exercise the role of appointing new trustees under the instrument.

5. The trust in this case was created under the **Trustees (Perpetual Succession Act)**. Under **section 6** of the **Act**, the filling of vacancies shall be done in accordance with the instrument creating the trust. In the instance case, the Constitution has provided for this. Further under **section 6(2)**:-

“The appointment of every new trustee shall be certified by, or by the director of, the trustees to the Minister upon the completion of the appointment.”

6. In conclusion, I find that no reason has been given why the court should be involved in the appointment of extra trustees for Solidarity Child Rescue Centre. I will not allow the originating summons.

DATED and DELIVERED at NAIROBI this 18TH day of JULY 2019.

A.O. MUCHELULE

JUDGE