



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 2330 OF 2011**

**IN THE MATTER OF THE ESTATE OF JOSEPH MBWIRIA GICHURU (DECEASED)**

**RULING**

1. Through a notice of motion dated 9<sup>th</sup> April 2018 but filed on 10<sup>th</sup> April 2018 by Faith Gatwiri Gichuru one of the administrators and a wife of the deceased, a vesting order was sought for the sale of property L.R. NO. Ngong/Ngong/21495 being part of the estate to Caroline Mongina Makori the intended purchaser for purposes of raising funds to pay school fees for the deceased's children who are beneficiaries of the said land held in trust by the applicant their mother for their benefit.

2. Application which is supported by grounds on the face of it and affidavit sworn on 9<sup>th</sup> April 2018 by the applicant and a consent from the co-administrator one Julius Muriithi is brought under Sections 4, 5, 7 and 126 of the Children Act, Sections 4, 5, 54, 56 and 57 of the Trustee Act and Article 53 of the Constitution 2010.

3. Briefly, the deceased in respect of whose estate these proceedings relate died intestate on 22<sup>nd</sup> September 2007 leaving behind a widow and two children (minors) namely Yvonne Nkirote Gichuru and George Karani Gichuru then aged 14 and 9 years respectively. A grant of letters of administration intestate was issued jointly to the widow (applicant) and one Julius Muriithi Laban on 30<sup>th</sup> January 2012 and subsequently confirmed on 22<sup>nd</sup> October 2012.

4. During confirmation, the estate comprising of LR Ngong/Ngong/21495 and LR Nkuene/Kathera/707 was distributed and directed to be registered in the name of the applicant for her own benefit and in trust for the two minors. It is one of the two properties LR Ngong/Ngong/21495 that the applicant intends to sell to meet school fees expenses for the children who are schooling in University (Yvonne Nkirote) and secondary school in relation to George Karani. Besides, the applicant also intends to raise funds to build a family house in one of the plots. A copy of the sale agreement signed by the intended purchaser was attached as well as school fees statements for the children to serve as proof of the urgent need for finances.

5. Unfortunately, one of the beneficiaries who is an adult one Yvonne Nkirote did not sign any consent nor sale agreement owing to her beneficial interest now that she has attained age of majority. She is no longer a child as insinuated by the applicant. For those reasons, the application cannot stand and the same must be dismissed with no order as to costs for lack of consent of Yvonne Nkirote a beneficiary.

Order accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 16<sup>TH</sup> DAY OF MAY, 2018.**

**J.N. ONYIEGO (JUDGE)**

In the presence of:

No appearance for.....Counsel for the applicant

Edwin.....Court Assistant