

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 2330 OF 2011

IN THE MATTER OF THE ESTATE OF JMG (DECEASED

AND

FGG.....APPLICANT

RULING

1. Through a Notice of Motion dated 29th May 2018 and filed on 30th September 2018, the applicant herein sought vesting orders to issue for the sale of L.R. No. Ngong/Ngong/[particulars withheld] to Caroline Mongina Makori. The application is based on grounds set out on the face of it and a supporting affidavit of even date sworn by the applicant.

2. Briefly, a grant of letters of administration intestate in respect of the estate herein was issued jointly to the applicant and one JML on 30th January 2012 and subsequently confirmed on 22nd October 2012. During confirmation, the court directed for L.R. No. Ngong/Ngong//[particulars withheld] and Nkuene/Kathera//[particulars withheld] to be registered in the name of the applicant for her own benefit and in trust for the two minors namely VN G and GKG.

3. According to the applicant's affidavit in support of the application, she wishes to sell L.R. No. Ngong/Ngong//[particulars withheld] to one Caroline Mongina Makori for purposes of raising funds to pay school fees for her children VNG a student at /[particulars withheld] and GKG a student at /[particulars withheld]. She averred that the children have been sent away from school due to huge outstanding fees balances hence the need to sell the property to secure them in school. She further claimed that part of the sale proceeds would be used to construct a family house on LR /[particulars withheld]. She attached a consent from her co-administrator JML (FGG-1) and her daughter VNG who is now an adult beneficiary (FGG-10).

4. I have considered the application herein, affidavit in support and materials placed before court. It is clear from the certificate of confirmation that the property in question is held by the applicant for her benefit and in trust for her two children then minors. Since then, one of them VG has reached age of majority.

5. The purpose for the vesting order to sell the land has been necessitated by the fact that one of the beneficiaries GKG is still a minor.

6. However, an urgent need in terms of raising school fees to educate the children has arisen. Further, there is need to construct a family house for the same children. I have seen a copy of the title deed in respect of the property in question already registered in the name of the applicant (FGG-5) and college admission letter for VG (FGG-11).

7. Taking into account that there is no objection to the proposed sale and considering the best interests of a child principle as enshrined under Article 53(2) of the Constitution and Section 4 (2) and 3 of the Children's Act, it is my conviction that the children will stand to benefit by the sale of the land to enable their mother (applicant) raise school fees for their education and also have a family house (shelter) to settle in.

8. Accordingly, I am satisfied that the reasons advanced for the vesting order to issue are justified and the application dated 29th May, 2018 is allowed as prayed with orders that:

(a) A vesting order be and is hereby issued for the applicant herein FGG to sell L.R. Ngong/Ngong/[particulars withheld] to one Caroline Mongina Makori for purposes of raising school fees for the children and also construction of a family house.

(b) Costs in the cause.

Order accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF DECEMBER 2018.

J.N. ONYIEGO

JUDGE