

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISC CIVIL APPLICATION 102 OF 2016

ENN.....EX-PARTE APPLICANT

RULING

1. The *ex-parte* applicant has applied under certificate of urgency through his notice of motion for him to be appointed as a guardian of the minor child pursuant to the provisions of sections 27 of the Land Act, 2012 and sections 42 (1), 56 (1) and 57 of Trustee Act, Cap 167) Laws of Kenya and all other enabling provisions of the law. Additionally, he also seeks an order of this court to authorize him to sell land parcel No. [Particulars Withheld]. in order to raise school fees for the minor child.

2. The grounds in support of the application are set out on the face of the notice of motion. These are as follows. First, the applicant is the biological father of the minor child. Second, the applicant and the minor child are registered as joint owners of the said parcel of land, which measures 0.81 hectares. Third, the applicant intends to sell part of the said parcel of land in order to settle and/or pay school fees for the minor and to meet other household expenses. Fourth, the applicant has stated that he cannot proceed with the sale unless a trustee is appointed on behalf of the minor child, as a minor can only hold title to land through a trustee. And finally, the applicant has stated that the minor child is at risk of being expelled from school for lack of school fees, since the applicant does not have any other source of income and that it is in the interest of justice that the application be granted.

3. The application is anchored in the applicant's supporting affidavit dated 17th June 2016. In that affidavit, the applicant has deponed that he is the biological father of the minor child who is aged 17 years. He has also deponed that the minor child and himself are registered as joint owners of land parcel No [Particulars Withheld], in regard to which he has attached a certificate of search as annex "ENN 1". Furthermore, the applicant has deponed that during the registration of the title to the parcel of land, he registered himself as a joint owner with his minor child but had failed to indicate that he was to hold the share of the minor child as his trustee.

4. It is his further affidavit evidence that he intends to sell 0.20 hectares of the said parcel of land to cater for the minor child's school fees and to meet other household expenses. He has further deponed that he cannot sell part of the suit land because under section 27 of the Land Act of 2012, a minor can only hold title to land through a trustee and therefore a transfer of the said parcel of land cannot be effected without the appointment of a trustee. It is also his evidence that he is experiencing economic hardships and is unable to raise school fees for the minor child and to meet his household expenses. In this regard, he has attached a copy of the school fees structure from [Particulars Withheld], Technical Secondary School as annex "ENN 3".

5. Finally, the applicant has deponed that his son is in danger of being expelled from school for lack of school fees and that it is in the interest of justice and fairness to grant the application.

6. I have considered the affidavit evidence of the applicant. I find that it is credible. I also find that the applicant is unable to cater for the school fees of his minor child with whom he is registered as a joint owner of land parcel No. [Particulars Withheld]. I also find that the applicant ought to have been registered as a trustee in his own behalf and on behalf of the minor child, when the said parcel of land was registered in their joint names. It is this omission which has given rise to this application.

7. In the circumstances, I find that the application is meritorious and I hereby grant the applicant's prayers

No. 2 and 3 of his notice of motion dated 17th June, 2016. It therefore follows that the applicant will hold the parcel of land in trust for himself and on behalf of the minor and as a trustee. Finally, his application to sell part of the parcel of the land is also hereby allowed.

8. There will be no orders as to costs in this *ex parte* application.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **12th** day of **JULY 2016**

In the presence of Mr Andande holding brief for Mr Lee Maina for the applicant

Court clerk Njue

J.M. BWONWONGA

JUDGE

12.06.16