



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

MISC. ELC NO. 37 OF 2018(O.S.)

IN THE MATTER OF: THE SOCIAL SERVICE LEAGUE

IN THE MATTER OF: TITLE NO. MOMBASA/BLOCK XL/27

IN THE MATTER OF: THE LAND REGISTRATION ACT NO.3 OF 2012

IN THE MATTER OF: THE REGISTERED LAND ACT CAP 300 LAWS OF KENYA

IN THE MATTER OF: THE TRUSTEE ACT CAP 167 LAWS OF KENYA

IN THE MATTER OF: THE SOCIETIES ACT CAP 108

SOCIAL SERVICE LEAGUE.....PETITIONER EX-PARTE

JUDGMENT

1. The Petitioner, the Social Service League brought this suit vide an Originating Summons dated 17th September, 2018 and filed in court on 26th September, 2018 seeking the following orders:

1. That this Honourable Court be pleased to have this matter heard ex parte at the first instance.

2. That this Honourable Court be pleased to dissolve the Trust Deed created on the 22nd day of January, 1932 on the piece of parcel of land known as PLOT NO.606 OF SECTION V containing point Nought Four Three (0.043) of an acre or thereabouts situate in the province of Seyidie at Mombasa more particularly described and delineated on plan No. 20828 referred to in the Certificate of Ownership No. 6744 dated 29th September 1923 and registered at the Coast Registry, Mombasa, as No. CR. 5551 and thereon numbered TITLE NO. MOMBASA/BLOCK XL/27 containing measurements Nought Decimal Nought Four Three (0.043) of an acre or thereabouts.

3. That this Honourable Court be pleased to authorize the Petitioners to sell, alienate, sub-divide or in any manner dispose of all that piece of land situate in Mombasa and known as MOMBASA/BLOCK XL/27 containing measurement Nought Decimal Nought Four Three(0.043) of an acre or thereabouts.

4. That the costs of this Application be costs in the cause.

2. The summons is supported by the affidavit of BIHARI PAREKH sworn on 17th September, 2018 and the grounds on the face of the summons. It is the Applicant's case that Sir Ali Bin Salim Bin Khalfan K.B.E.C.M.G. (deceased), via a document dated 6th August 1931 and registered at the Coast Registry, Mombasa, as No.CR.7226/2 freely and voluntarily transferred to (1) Abdulhussein Kaderbhai (2) Rajabali Hasham Paroo and (3) Ambalal Bhailabhai Patel as Trustees of the Social Service League all that piece or Parcel of Land known as Plot No. 52 of Section IV containing point one two (0.12) of an acre or thereabouts together with all the buildings standing thereon situate in the province of Seyidie at Mombasa more particularly described and delineated on plan No. 18310 referred to in the Certificate of Ownership No. 8416 dated 11th November, 1923 for trusts specified in the said document. That as per the document dated 25th January, 1923, Sir Ali Bin Salim Bin Khalfan was desirous of providing for the repairs restoration upkeep and necessary alterations of the building situate on PLOT NO. 52 OF SECTION IV MOMBASA and of the building on the Plot and he transferred land known as PLOT NO.606 OF SECTION V MEASURING 0.043 of an acre or thereabouts situate in the province of Seyidie at Mombasa more Particularly described and delineated on plan No.20828 referred to in the Certificate of Ownership No. 6744 dated 29th September, 1923 and registered at the Coast Registry, Mombasa, as No.CR. 5551 as settlor freely and voluntarily and without any valuable consideration to (1) Abdulhussein Kaderbhai(2) Rajabali Hashan Paroo and (3) Ambalal Bhailalbhahi Patel as Trustees of Social Service League Mombasa all his rights title and

interest in the said piece or parcel of land together with all the buildings standing thereon and all easements rights improvements and advantages appertaining thereto or usually held or enjoyed therewith to hold in perpetuity the said property for the benefit of the said institution and for the purposes mentioned in the trust deed. **PLOT NO.52 OF SECTION IV MEASURING 0.12 ACRES** or thereabouts is hereinafter referred to as **MOMBASA/BLOCK XXXII/18 AND PLOT NO.606 OF SECTION V MEASURING 0.043** hereinafter referred to as **MOMBASA/BLOCK XL/27** and Mr. Bihari Parekh, Mr. Mahesh Dhuntia and Mr. Mohamed Kassim Haji Ebrahim are the current registered absolute proprietors of the said parcel of land as the current Trustees of the Social Service League Mombasa.

3. The Applicant's case is that the purpose of consecrating the **PLOT NO.MOMBASA/BLOCK XL/27** as Trust was to let out the said premises and to collect and realize the rents or income or profits of the said building and to retain the said rent or income or profits and to invest the proceeds so realized in any investments authorized by law with power from time to time to change the same or any of them for others of a like nature to benefit the "trust fund", pay out of the said trust fund all moneys payable as rates, taxes, and assessments or other charges levied by the Government, Municipality or any other body duly constituted under the authority of law on the plot and/or building transferred and on **PLOT. NO.52 SECTION IV** and/or building standing thereon, pay out of the trust fund all charges for white-washing, repairs and necessary alterations for buildings situate on the aforesaid plots, creation of a "Reserve Fund" from any surplus income which shall be used to restore or rebuild the whole or any portion of the buildings on the said plots aforesaid when the managing committee of the Social Services League shall be at liberty to spend the surplus Trust Fund for the benefit of the objects and purposes of the Social Services League in the manner the managing committee may deem fit.

4. It is the Applicant's contention that the property known as **MOMBASA/BLOCK XL/27** no longer serves the intention of the trust as it does not generate enough income from the rent received from the shops therein to benefit the League in discharging its duties as per the intentions of the donor. The Petitioner avers that the trustees have faithfully administered the said plot and in its present state it does not generate sufficient income and are now desirous of having the said Trust Deed dissolved and the Property sold in order to use the proceeds from the sale to build two apartments on **PLOT NO. MOMBASA/BLOCK XXXII/18** to generate an income more befitting of the Trust Fund. The Applicant avers that they are ready to comply with any such conditions/terms as may be determined by the court for granting the orders sought. The Applicant have annexed copies of the Trust Deeds, copies of Title Documents, photocopies of the property, Resolution of the Social Service League as well as a valuation report. They have also attached a Memorandum of Understanding with a potential buyer.

5. I have carefully considered the pleadings filed, the evidence on record and the relevant laws. Section 56 of the Trustee Act Cap 167 Laws of Kenya gives the Court jurisdiction to make orders authorizing dealings with trust property. It states as follows:

"56 (1) Where, in the management or administration vested in trustees, any sale, lease, mortgage, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the court expedient, but cannot be effected by reason of the absence of a power for that purpose vested in the trustee either generally or in any particular instance the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit, and may direct in what manner any money authorized to be expended, and the costs of any transaction, are to be paid or borne as between capital and income

(2) The court may, from time to time, rescind or vary an order made under this Section, or may make any new or further order.

(3) An Application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust. "

6. It is clear from the evidence on record that there existed Trust Deed created in 1932 for the benefit of the Applicant over **TITLE NUMBERS MOMBASA/BLOCK XL/27** for the purpose outlined hereinabove. It is the Applicant's contention that the said Plot no longer serves the intention of the trust as it does not generate enough income from the rent received from the shops therein to benefit the Applicant in discharging its duties as per the intention of the donor. The Trustees have averred that they have faithfully administered the said Plot and in its present state it does not generate sufficient income befitting the intentions of the donor and are now desirous of having the said deed dissolved and the property sold in order to use the proceeds from the proposed sale to build two apartments on **PLOT NO. MOMBASA/BLOCK XXXII/18**, which is also Trust property to generate more income befitting the Trust Fund. The Trustees aver that the Trust is in a loss as the Applicant is currently paying rates and security charges on the property. The Application basically seeks to dissolve the Trust and sell the aforementioned property and use the proceeds of the sale to develop another trust property to better serve the intention of the donor.

7. I have considered the application. I am satisfied that the Application has merit and I do grant the same in the following terms:

1. The Trust Deed created on 22nd day of January 1932 on the piece of land known as PLOT NO.606 OF SECTION V containing 0.043 of an acre or thereabouts situate in Mombasa more particularly described and delineated on plan No. 20828 referred to in the certificate of ownership No. 6744 dated 29th September, 1923 and registered at the Coast Registry, Mombasa as No.C.R. 5551 and thereon numbered TITLE NO. MOMBASA/BLOCK XL/27 and is hereby dissolved.

2. The Applicants are authorized to sell the said property known as TITLE NO. MOMBASA/ BLOCK XL/27.

3. The proceeds from the sale referred to in paragraph (2) above to be used to build or develop PLOT. NO. MOMBASA/BLOCK XXXII/18 to generate income for the Trust Fund.

4. There shall be no order as to costs.

DATED, SIGNED and DELIVERED at MOMBASA this 20th day of March 2019.

C.K. YANO

JUDGE

IN THE PRESENCE OF:

No appearance for the petitioner

Yumna Court Assistant

C.K. YANO

JUDGE