



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC MISC.APPL. NO. 8 OF 2019 (O.S.)

BENNETAH MUKIMBA WAFUKHO.....APPLICANT

VERSUS

THE LAND REGISTRAR TRANS NZOIA.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

JAMII CO-OPERATIVE SAVINGS

AND CREDIT SOCIETY LTD.....INTERESTED PARTY

RULING

1. The Originating Summons dated **23/4/2019** and filed in court on the same date has been brought by the applicant seeking the determination of the following questions:-

(1) Whether the court should grant leave to the applicant to create a charge over the properties known as Kitale Municipality Block 15/ Koitogos/4344 and Kitale Municipality Block 15/4534 in favour of the interested party.

(2) Whether the court should grant leave to the respondents to issue LCB consent, create and register a charge over properties known as Kitale Municipality Block 15/ Koitogos/4344 and Kitale Municipality Block 15/4534 in favour of the interested party and enter the said changes in the encumbrance section of the said properties.

2. The application is premised on 4 grounds stated at the foot of the Summons and is supported by a sworn affidavit, also dated **23/4/2019**. The Originating Summons is brought under **Sections 7(1) and (2) and (3), 17, 18, 47 and 48** of the **Trustee Act**, **Section 47** of the **Land Registration Act** **Section 27** of the **Land Act** and **Order 37 Rule 1** of the **Civil Procedure Rules 2010**.

3. The background to the originating summons is that the applicant, a single parent, bought land and had it registered jointly in her name and that of her son. She considers herself to be holding the suit properties on her own behalf as well as on behalf of her son and in pursuit of the interests of both joint title holders she is intent on charging the titles to obtain finances for the purpose of completion of the sale transaction in respect of the said properties, and their development.

4. There appears to be good reason for the summons at hand: though the minor's mother appears to have purchased the property alone and preferred to have it registered in both names, each of the title deeds issued in respect of plots numbers **4344** and **4534** respectively on **7/3/2019** and **14/3/2019** respectively bears both their names. The land also appears to have been transferred to them on condition that the purchase price would be paid within a certain period after that registration of transfer.

5. Further to this, the minor, whose name has been entered into the register, can not conduct dealings in respect to the suit land while still under that disability. **Section 47** of the **Land Registration Act** provides as follows:

47. Minors

(1)The name of a person under the age of eighteen years may be entered in the register to enable the minor's interest to be held in trust and shall be registered under the name of the guardian either on first registration or as a transferee or on transmission.

(2)Nothing in this section enables a person under eighteen years of age to deal with land or any interest in land by virtue of such registration, and, if the Registrar knows a child has been registered, the Registrar shall enter a restriction accordingly.

(3) If a disposition by a minor whose minority has not been disclosed to the Registrar has been registered, that disposition may not be set aside only on the grounds of minority.

6. A draft charge and application forms for the consent of the Land Control Board, termed (in my view quite erroneously) as the “Trans Nzoia Land Control Board” are attached to the Summons. So is the national identity card of the applicant, her son’s birth certificate, and a letter by the proposed lender instructing Chege Kibathi & Co. Advocates to have the suit lands named therein (which incidentally and curiously, and which I believe is a mere mistake) are not the suit lands named in the originating summons) charged **further** to secure Ksh 10,000,000/=.

7. The agreement dated **30/4/2019** is also attached to the originating summons. It relates to the suit lands. It appears to have been executed after the lands were transferred to the applicant and her son. I note that **clause 3.2** states that the purchaser, through the proposed lender, shall pay the full amount of purchase price of Kshs. 10,000,000/= to the vendor upon the successful registration of the transfer and a legal charge in favour of the lender. The agreement further states that the purchase price shall be paid to the vendor directly through a loan facility upon the registration of the transfer in favour of the purchaser and a legal charge in their favour. The agreement gives the name, bank, branch and account number of the vendor.

8. I find that the originating summons is not opposed. I therefore allow it and grant the applicant leave to create a charge over the suit properties in favour of the interested party. A grant of this leave automatically entitles the respondents to undertake if they find it fit the measures required in respect of issuance of consent and the registration of a charge over the suit properties subject to all other requirements of the law.

Dated, signed and delivered at Kitale on this 13th day of May, 2019.

MWANGI NJOROGE

JUDGE

13/5/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Kuria for Respondents

Mr. Karani holding brief for Juma for the Applicants

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

13/5/2019