



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC. MISC CASE NO. 38 OF 2018**

**IN THE MATTER OF DWK, ROU AND RWK HOLDING PRINCESS PARK APARTMENT NO. D1 BLOCK D ON L.R. NO. [particulars withheld] LAVINGTON NAIROBI, IN TRUST FOR V A O**

**AND**

**CURRENTLY IN THE MATTER OF CONSENT OF COURT TO ALLOW RUTH WANGECHI KIIRU HOLDING PRINCESS PARK APARTMENT NO. D1 BLOCK D ON L.R. NO. [particulars withheld] LAVINGTON NAIROBI TO SELL THE PROPERTY TO SIBOE WEKUNDA ALEX & WINNIE KEMUNTO MANWARI FOR PURPOSES OF REINVESTING THE PROCEEDS FOR THE BENEFIT OF THE MINOR**

**RULING**

The Applicant seeks the court's consent to sell apartment number D1 Block D on L. R. No. [particulars withheld] Lavington registered in the name of D W K, R O U and V A O. The Applicant also seeks to have the court give directions or any other orders it may deem necessary and expedient. The application is supported by the affidavit of Ruth Wangechi Kiiru.

The Applicant is the mother D W K, R O U and V O O aged 32, 22 and 16 respectively. The Applicant bought the property in question for the benefit of her children. At the time of purchase of the apartment only D had attained the age of majority.

The Applicant brought the application seeking to sell the apartment so that she can use the funds to clear V's outstanding fees at [particulars withheld] International School, pay R's fees and also pay V's school fees when she proceeds to college in UK later this year.

The Applicant requires the leave of court to dispose of the property since it is trust property. She has an offer for Kshs. 19 million for the apartment which will be paid within 14 days of the registration of the transfer in favour of the purchaser.

The application was brought under the certificate of urgency since the money is urgently required for the education and maintenance of the two children. The Applicant undertakes to invest any surplus money and the resulting income from time to time. The Applicant attached a copy of the lease dated 5/11/2007 bearing the names of her 3 children as lessees. She also annexed a statement of account from [particulars withheld] International School showing an outstanding balance of Kshs. 804,196 on account of V's school fees. She depones that V is unable to get her certificate despite having completed her education at this school due to the outstanding fees. She attached a copy of the agreement of sale for the proposed purchase of the apartment.

This matter was first filed before the Family Division of the High Court. Justice Ougo delivered a ruling on 22/2/2018 in which she stated that the matter fell within the ambit of the Environment and Land Court. It was then transferred to this court.

Justice Okong'o directed that the Applicant's two children who are the registered owners of the suit property were to attend court to be interviewed. This court interviewed VAO, ROU together with the Applicant on 14/3/2018. The children confirmed that their mother is a single mother and meets all their requirements including their education and upkeep. She used to work but stopped when she fell ill. They urged the court to allow their mother to sell the apartment to enable V proceed to university in the UK and to enable R complete his university education at Daystar University. The mother informed the court that her first born daughter was studying in the UK and has an outstanding fee balance of Kshs. 1.5 million.

She also stated that she has property in Umoja, Nairobi and in Nyeri. These properties would not fetch much if she were to sell them to pay her children's fees. She proposes to apply the balance of the proceeds from the sale of the apartment to putting up flats on her Umoja property to enable her raise more money for V's college fees.

The court directed the Applicant to file a further affidavit and attach copies of the titles for the properties she claims she owned and additional documents on the minor's educational requirements. She filed the further affidavit on 15/3/2018, to which she annexed a copy of the Offer Acceptance Form for [particulars withheld] International College, in the UK, where V had been admitted to join and the invoice for 13,160 pounds. She also attached the drawings for the proposed development of flats on her Umoja property together with copies of the certificates of lease in respect of land title numbers Nairobi/Block [particulars withheld] and Thegenge/Karangia/[particulars withheld] all of

which are registered in her name.

The court has considered the application, the supporting and further affidavits together with the oral evidence of the minor, her brother and the Applicant. The court is satisfied that it is necessary for the Applicant to sell apartment number D1 Block D on L. R. No. [particulars withheld], Lavington registered in the name of DWK, ROU and VAO to pay fees for the minor and her brother.

The court grants prayer 1 of the application dated 8/11/2017 and directs the Applicant to file a statement of account on how the sale proceeds will have been utilised within 6 months of today.

Dated and delivered at Nairobi this 27<sup>th</sup> day of March 2018.

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. Ochieng for the Applicant

Mr. V. Owuor- Court Assistant