



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT EMBU

MISC E.L.C. APPLICATION NO. 1B OF 2018

IN THE MATTER OF LMM AND FMM (MINORS) (THROUGH

THEIR GRANDFATHER AND NEXT FRIEND HNR)

AND

IN THE MATTER OF SECTION 56 OF THE TRUSTEE ACT CAP 167 LAWS OF KENYA

AND

IN THE MATTER OF EXECUTION OF DEED OF EXCHANGE OVER LAND

PARCELS NUMBER NTHAWA/GITUBIRI/[...] AND NTHAWA/SIKAGAO/[...]

HNR.....EX-PARTE APPLICANT

RULING

1. By an undated and unsigned amended originating summons filed on 13th June 2018 brought under the provisions of **section 56 of the Trustee Act Cap 167 Laws of Kenya, section 27 of Land Act No. 6 of 2012 Laws of Kenya, Order 37 Rule 1 (f) of the Civil Procedure Rules, 2010 and sections 1A, 1B, and 3A of the Civil Procedure Act (Cap 21 Laws of Kenya)**, the Applicant, Henry Nyaga Rukingi, sought the following orders;

a. This honourable court be pleased to issue an order to allow the Applicant to execute a deed of exchange in favour of HNR to hold on behalf of LMM and FMM (minors), jointly, and HNR to hold on his behalf in respect of land parcel numbers Nthawa/Siakago/[...] and Nthawa/Gitubiri/[...].

b. A trust be created in the name of HNR to hold on behalf of LMM and FMM (minors) jointly over land parcel number Nthawa/Gitubiri/[...].

c. The trust existing over land parcel number Nthawa/Siakago/[...] in the name of HNR on behalf of LMM and FMM (minors) jointly be terminated.

d. Land parcel number Nthawa/Siakago/[...] be registered in the name of the HNR as the sole proprietor.

2. The said application was supported by the supporting affidavit of the Applicant sworn on 13th June 2018 and the various annexures attached to his original supporting affidavit sworn on 23rd November 2017. The gist of the said affidavit was that whereas the Applicant was registered as proprietor of *Title No Nthawa/Siakago/[...]* (hereinafter *parcel No [...]*) in trust for the two minors, he wanted to exchange it with *Title No. Nthawa/Siakago/[...]* (hereinafter *parcel No. 4911*) so that he is registered as proprietor thereof in trust for the same minors.

3. The provisions of **section 56 of the Trustee Act (Cap 167)** state as follows in relation to the holding of property by minors;

“56. (1) Where, in the management or administration of any property 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 trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees 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.

4. The Applicant also relied on **section 27 of the Land Act, 2012** which states as follows;

“27. A child shall be capable of holding title to land through a trustee and such child shall be in the same position as an adult with regard to the child’s liability and obligations to the land.”

5. The court is satisfied that although minors are entitled to own property, they cannot hold it directly but through a trustee. The court is further satisfied that an exchange is a disposition of an interest in land which is required to be sanctioned by the court under **section 56 of the Trustee Act**.

6. The court has considered the said application together with the supporting affidavit. The court has also considered the relevant provisions of the law relied upon by the Applicant. It would appear that the Applicant would like to give the minors parcel No. [...] which would otherwise have gone to their father if he were alive. The Applicant asserts that he is the father of the late minors’ father and as such the grandfather of the minors.

7. The court is satisfied that the proposed exchange would be beneficial to the minors for the reasons given by the Applicant in the application. The court is further satisfied that the Applicant would take care of the best interest of the minors since he has been holding parcel No. [...] in trust for them since the demise of their father.

8. The court, therefore, finds merit in the Applicant’s said amended originating summons filed on 13th June 2018 and the same is accordingly allowed as prayed.

9. It is so decided.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **20TH** day of **DECEMBER, 2018**.

In the presence of Mr Ndolo holding brief for Mr Andande for the ex-parte Applicant.

Court clerk Mr Muinde.

Y.M. ANGIMA

JUDGE

20.12.18