



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

MISC. ELC NO 33 OF 2016 (O.S.)

FAIZA KAREN AKESONPLANTIFF

VERSUS

WAKF COMMISSIONERS OF KENYA.....DEFENDANT

JUDGMENT

1. Faiza Karen Akesson, hereafter referred to as the applicant brought this suit vide an Originating Summons dated 30th September 2016 and filed in court on 13th October 2013, seeking the following orders:

1) That this Honourable Court be pleased to dissolve the Wakf of Mwanakwe Mwinyi Binti Mwinyi Yai (deceased) created on the 1st day of August 1923 registered in the Mombasa Registry as C.R. 2507 on all that piece of land situated in Seydie at Changamwe Miritini which is demarcated and delineated on the plan No.16592 deposited in the office of the Recorder of Titles at Mombasa and thereon Numbered 725 Section VI and containing measurement one point three nine (1.39) acres or thereabout.

2) That this Honourable Court be pleased to authorize the applicant to sell, alienate, sub-divide or in any manner dispose of all that piece of land situated in Seydie at Changamwe Miritini which is demarcated and delineated on the plan No.16592 deposited in the office of the Recorder of Titles at Mombasa and thereon numbered 725 Section VI and containing measurement one point three nine (1.39) acres or thereabouts.

3) That this Honourable Court be pleased to issue such other orders it deems just and convenient to meet the ends of justice.

2. The summons is supported by the applicant's affidavit sworn on 30th September 2016 and the grounds on the face of the summons.

The respondent, the Wakf Commissioners of Kenya were served with the Originating Summons but did not file any response within the stipulated time or at all. When the matter came up for hearing on 16th March 2017, the Respondent was represented by its secretary, Mr. Mohamed Shali who requested for more time to enable them file their response to the summons. The court granted the respondent leave to file their response with 21 days and the matter was fixed for hearing on 13th June, 2017. The respondent however, had not filed any response and was not present in court. The case therefore proceeded ex-parte and the applicant testified on 13th June, 2017.

3. In her evidence the Applicant reiterated the contents of her affidavit and stated that the suit property

originally belonged to her grandmother, Mwanakwe Mwinyi Binti Mwinyi Yai (deceased) who in 1923 created a Wakf to herself and her children forever. She produced a copy of the certificate of ownership as exhibit 1. The applicant stated that the said property was subsequently vested on the applicants mother, Joan Alice Colombo (nee Burke), (deceased) who was the only child and beneficiary to the estate of Mwanakwe Mwinyi Binti Mwinyi Yai (deceased.) That by a deed of appointment dated 13th August 2003, the Applicant's mother appointed the applicant as the sole trustee of the Wakf. The said Deed of Appointment was produced as exhibit 2. The Applicant went on to state that she has faithfully administered the Wakf as the sole trustee and sole beneficiary and there are no other beneficiaries or persons with equal right to the said property subject of the Wakf. The applicant wrote to the respondent on 14th April 2016 (exhibit 3) informing them of the applicant's intention to dissolve the Wakf but the respondent did not respond. The Applicant further stated that she is a retiree and the disposal of the property will be more useful to her now as a pensioner. The Applicant urged the court to grant her the orders sought.

4. I have carefully considered the pleadings filed, the evidence on record and the relevant laws. Section 4 of the Wakf Commissioners Act, Cap 109 Laws of Kenya provides as follows:

“4 (1) Every Wakf heretofore or hereafter made by any Muslim which is made, either wholly or partly, for any of the following purposes, that is to say:

a) for the benefit, either wholly or partly, of the family, children, descendants or kindred of the maker or of any other person; or

b)

is declared to be a valid wakf if –

i. it is in every other respect made in accordance with Muslim Law; and

ii. the ultimate benefit in the property the subject of the Wakf is expressly, or in any case in which the personal law of the person making the wakf so permits, impliedly, reserved for the poor or for any other purpose recognized by Muslim law as a religious, pious or charitable purpose of a permanent character:

Provided that the absence of any reservation of the ultimate benefit in property the subject of a Wakf for the poor or any other purpose recognized by Muslim Law as a religious, pious or charitable purpose of a permanent character shall not invalidate the Wakf if the personal law of the maker of the Wakf does not require any such reservation.

(2). No Wakf to which subsection (1) applies shall be invalid merely because the benefit in the property reserved by the Wakf for the poor or any religious, pious or charitable purpose is not to take effect until after the extinction of family, children, descendants or kindred of the maker of the Wakf.”

5 It is clear from the provisions of Section 4 (1) (a) of the Wakf Commissioners Act that there existed a valid Wakf made wholly for the benefit of Mwanakwe Mwinyi Binti Mwinyi Yai (deceased) and her children forever. The Wakf property was vested in the applicant's mother Joan Alice Colombo (nee Burke) (deceased) who was the only child and beneficiary of the estate of Mwanakwe Mwinyi Binti Mwinyi Yai (deceased) and who in turn appointed the applicant as the sole trustee of the said Wakf. The applicant has stated that she has faithfully administered the Wakf as the sole trustee and sole beneficiary of the said Wakf since her appointment and that there are no other beneficiaries to the Wakf property. The Applicant is now desirous of having the said Wakf dissolved. Vide a notice dated 14th April 2016 and which was produced and marked as exhibit 3, the applicant wrote to the Wakf Commissioners of Kenya, the Respondent herein informing them of her intention to dissolve the Wakf. The respondent did not respond to the said letter. The respondent were duly served with the Originating Summons but did not file any response even after the court granted it more time through its secretary who attended court

when the matter came up on 16th March 2017. The application thereof remains for all intends and purposes uncontested.

6. I am satisfied that the application has merit and I do grant the same in terms of prayers 1 and 2 thereof.

There shall be no order as to costs.

Delivered, dated and signed at Mombasa this 24th day of July, 2017.

C. YANO

JUDGE