



REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT AT KERUGOYA

MISC APPLICATION NO. 47 OF 2014

MARY WANJIRA APPLICANT

RULING

This is in respect to the applicant's Notice of Motion dated 24th November 2014 in which the applicant seeks the following orders:-

1. ***That she be appointed as guardian of JM and DW her minor children***
2. ***That this Court do terminate the trust and tenancy for life granted to the applicant in respect to L.R No. INOI/KARIKO/3322 to enable her make an exchange with land parcel No. KARIKO/THAITA/1952***
3. ***That upon that exchange, the Land Registrar Kirinyaga do register INOI/THAITA/1952 in the names of the two minors.***

The genesis of this application is that the applicant who is the mother of the two minors namely JM and DW is the registered proprietor of the parcel of land No. INOI/KARIKO/3322 which she holds in trust for the two minors. Following the death of her husband, the applicant has been involved in inheritance battles with her relatives which only came to an end in July 2014. Since the environment is hostile to her and the minors, she has decided to relocate to another parcel of land belonging to one EPHANTUS MUCHIRI KAGWI who will give his land parcel No. INOI/THAITA/1952 and an additional Ksh. 500,000/= as compensation in exchange for land parcel No. INOI/KARIKO/3322.

I have considered the application and the annexures attached to it being the birth certificates of the minors, the certificate of search in respect of parcel No. INOI/KARIKO/3322 and the Land Exchange Agreement between the applicant and the said EPHANTUS MUCHIRI KAGWI in respect of the two parcel of land.

It would seem from the applicant's affidavit that since the demise of her late husband in 1983 after which the parcel No. INOI/KARIKO/3322 was registered in her names, she has not had peace with her in-laws. That is unfortunate indeed and I agree with her that she needs to bring up the children in a friendly environment.

Having said so, I notice from the birth certificate of JM (annexture MWG 2A) that he was born on 7th May 2007. That means that he will be 18 years old in two (2) months and cease being a child. He will then be in a position to make decisions for himself including entering into agreements. Since the applicant has persevered her in-laws' hostility for this long, surely she can wait for another two months for JM to become of age.

Further, there is no mention of how she proposes to use the Ksh. 500,000/= that EPHANTUS MUCHIRI KAGWI will give her in exchange for the parcel No. INOI/KARIKO/3322. Will it be invested for the

benefit of the minors?

Much as I sympathize with the applicant, I feel she can wait for a few months at least in the case of JM before making a decision over the land transfer.

In the circumstances, I would dismiss the Notice of Motion dated 24th November 2014.

B.N. OLAO

JUDGE

13TH MARCH, 2015

17/3/2015

Before

B.N. Olao – Judge

Gichia – CC

Mr. Njoroge for Ngangah for Applicant – present

COURT: Ruling delivered this 17th day of March 2015 in open Court.

Mr. Njoroge for Ngangah for Applicant present.

B.N. OLAO

JUDGE

17TH MARCH, 2015