



REPUBLIC OF KENYA



**In re CBD & another (Minors) (Environment and Land Miscellaneous Application E008 of 2024) [2024] KEELC 4547 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4547 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E008 OF 2024  
EC CHERONO, J  
JUNE 6, 2024**

**RULING**

1. RBW, the Applicant herein filed the ex-parte Originating Summons dated 9<sup>th</sup> May, 2024 under Section 56(1) and (3) of the *Trustees Act*, Order 37 Rule 1(f) of the *Civil Procedure Rules*, section 1A, 1B and 3A of the *Civil Procedure Act* seeking the following orders;
  - a. (Spent)
  - b. That the applicant be granted leave to sell land Title NO. E.Bukusu/S.Kanduyi/XXXX
  - c. That this Honourable Court be pleased to make such other orders, as it deems fit and just in the circumstances
2. The application is based on the following nine (9) grounds;
  1. The applicant and the minors are registered as the absolute proprietors of land title NO.E.Bukusu/S.Kanduyi/XXXX
  2. The applicant bought the suit land from one John Jeferson Wangila Kenyi vide a sale agreement dated 7<sup>th</sup> February 2020 and thereafter had the transfer registered in her name and those of the minors.
  3. The applicant is the biological mother of the minors.
  4. The applicant has entered into an agreement with a potential buyer of the suit land and intends to sell it so that she can develop land title No. Kajiado/Kisaju/XXXX by constructing income-generating rental houses for the welfare of the minors.
  5. The applicant has already been paid a deposit and the balance will only be paid after the orders sought herein are granted.
  6. It is only fair that the applicant be allowed to dispose of the suit land to improve and develop land parcel No. Kajiado/Kisaju/XXXX in order to generate better income for the welfare of the minors and herself.



7. The applicant can't dispose of the minors' interest in the suit land without the leave of this honourable court.
8. Unless the orders sought above are granted, the applicant shall not be able to dispose of the suit parcel of land.
9. It is in the best interest of the minors to grant the orders sought herein.
3. The application is also supported by the affidavit of the applicant sworn the same date in which she deposed that her and the two minors CBD and TAHD are registered as the absolute proprietors of land parcel No. E.Bukusu/S.Kanduyi/XXXX, a copy of which she annexed and marked "RBW 1(a) &(b)" respectively.
4. She stated that she bought the suit land from one John Jeferson Wangila Kenyi vide a sale agreement dated 7<sup>th</sup> February, 2020 and thereafter had the transfer registered in her joint names with the two minors CBD and TAHD. She annexed a copy of the sale agreement as "RBW-2".
5. The ex-parte applicant further stated that both CBD and TAHD are minors and that she is their biological mother. She annexed copies of birth certificates and marked RBW-3(a) & (b)
6. She further stated that she owns another land parcel No. Kajiado/Kisaju/XXXX that she intends to develop by constructing income generating rental houses for the welfare of the minors and annexed a copy of the title deed as RBW-4
7. The ex-parte applicant also stated that she entered into an agreement for the sale of the suit land at a consideration of Ksh 1,750,000/ and received a deposit of Khs 100,000/ and the balance will only be paid upon being granted the orders sought herein. She annexed a copy of the sale agreement and marked RBW-5. She stated that it is only fair that she be allowed to to dispose of the suit property in order to raise funds to develop land parcel No. Kajiado/Kisaju/XXXX in order to generate better income for the welfare of the said minors and herself.
8. She further stated that she cannot dispose of the minors' interest in the suit land without the permission of this Honourable court and that unless the orders sought above are granted, she cannot dispose of the suit land. In conclusion, she stated that it is in the interest of the minors to grant the orders sought herein.
9. By way of a further affidavit sworn by one FDO sworn on 21<sup>st</sup> May 2024, the deponent stated that he is the spouse of Ruth Berita Wafula who is the joint registered proprietor with their two minor children CBD & TAHD in land parcel NO. E.Bukusu/S.Kanduyi/XXXX. He stated that he understands the nature and effect of the sale of the suit land and thereby gives his full consent to the transaction. He deposed that he has taken independent counsel regarding the nature and effect of that transaction and that his spouse Ruth Berita Wafula has not used any compulsion or threat or exercised undue influence on him to induce him execute the affidavit of spousal consent. He stated that he is making the affidavit pursuant to the provisions of section 6 & 7 of the Matrimonial Property Act, 2013, land Act, 2012 and the Land Registration Act, 2012
10. The one and singular issue for determination in this application is whether this court has jurisdiction to give consent and if the answer is in the affirmative, whether the ex-parte applicant has established the requisite grounds for the grant of the orders sought.



11. Section 27 of the Land Act No.6 of 2012 sets out the obligations of minors registered as proprietors of in the following terms;

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 litigations to the land."

12. Section 47 of the Land Registration Act No. 3 of 2012 also governing the registration of minors as proprietors of land provides as follows;

47

- (1) The name of a person under the age of eighteen years may be entered in the register to enable the minors 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 ground of minority."

13. From the above provisions of the law, it is clear that Carl Benson Dede and Tegy Amor Hawi Dede, being of minority age, cannot enter into the transaction or give consent to the proposed sale transaction. Though the applicant may be the one who single handedly acquired the suit land and voluntarily included the minors as co-proprietors, the minors acquired the rights of a proprietor over the suit land upon registration as set out under section 25 of the Land Registration Act, No.3 of 2012.

14. Having been registered as joint tenants without indicating the share each hold, they are therefore deemed as tenants in common in equal shares as contemplated under Section 91(2) of the Land Registration Act. As tenants in common, they may have the land partitioned and each to be registered as proprietor of their specific portions under Section 93 of the same Act.

15. Having carefully considered the explanations given by the ex-parte applicant and her spouse in the supplementary affidavit sworn on 21<sup>st</sup> May 2024 and considering that the two minors CBD and TAHHD are tenants in common with the ex-parte applicant since they are of minority age and cannot transact business or give consent, I am satisfied that it would be in the best interest of the two minors that the orders sought are granted.

16. For the reasons set out above, the Originating Summons application dated 9<sup>th</sup> May 2024 is merited and the same is hereby allowed as prayed.

17. Orders accordingly.

**DATED, DELIVERED AND SIGNED AT BUNGOMA THIS 06TH DAY OF JUNE, 2024.**

**HON. E.C CHERONO**

**ELC JUDGE**

In the presence of;



1. Mr. Kamande for ex-parte applicant
2. Respondent N/A
3. Bett C/A

