



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of John Muritu Kigwe (Deceased) (Succession Cause
123 of 2017) [2022] KEHC 12547 (KLR) (5 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12547 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 123 OF 2017**

MM KASANGO, J

AUGUST 5, 2022

IN THE MATTER OF THE ESTATE OF JOHN MURITU KIGWE (DECEASED)

RULING

1. A grant was issued to Susan Wanjiru Muritu in this matter, on January 3, 2018. That grant was confirmed on June 21, 2021. One property of the deceased's estate was distributed to three adults and three minors. Susan holds that property in trust for three adults and three minors.
2. Susan has filed an application dated May 4, 2022 seeking leave and authorization to sell the property she holds in trust. That prayer is approved by the three adults through affidavits.
3. Susan has stated the purchase price expected from the proposed sale of the property. I raised a concern at the hearing of the application, that there is no indication of who would hold the proceeds, which Susan stated was earmarked for setting up an educational fund for the minors. Susan swore a further affidavit stating that the mother of the minors was the one to set up the education fund and which would be registered in the name of the minor's mother to hold in trust for those minor.

Analysis

4. One of the most important duties of trustees is to preserve and protect trust assets. Section 56 of the [Trustee Act](#) (cap 167) enables the court to grant leave to sell amongst other transaction over the trust property. That section provides:-

“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.”

5. The sale of the property will provide finances for the minors’ education and will also make it possible for a home to be purchased which will be held in trust for the minors. The application of the principle of ‘best interest of the child’ is a constitutional requirement. Article 53(2) of the Constitution requires a child’s best interest to be of paramount importance in every matter concerning the child. Bearing in mind the information given by Susan, by the present application, I am satisfied that the sale of the property is in the best interest of the minor children.

Conclusion

6. I therefore grant the following orders:-
- a. This court grants leave and authority to Susan Wanjiru Muritu to sell the property LR No 10823/136 (IR 112591).
 - b. From the sale proceeds Susan Wanjiru Muritu shall provide Kshs 7,000,000 (seven million) which shall be used by Margaret Wanjeri Kigwe to set up educational fund for the minors JCMK, JFMK and MJGK.
 - c. Susan Wanjiru Muritu shall release Kshs 25,000,000 (twenty five million) to Margaret Wanjeri Kigwe which funds shall be used to purchase a home for the aforesaid minors and which property shall be held in trust for the minors by Margaret Wanjeri Kigwe.
 - d. There shall be no orders as to costs to the chamber summons dated May 4, 2022.

JUDGMENT DATED AND DELIVERED AT KIAMBU 5TH DAY OF AUGUST, 2022.

MARY KASANGO

JUDGE

In the presence of :-

Court Assistant:- Mourice

For administrator (Susan Wanjeri Muritu):- Ms Chepngetich

Court

Ruling delivered virtually.

MARY KASANGO

JUDGE

