



In re Application by CWK as Trustee for Consent of Court to allow her to Sell the Properties for Purposes of Investing the Proceeds for the Benefit of the Minor (Environment & Land Miscellaneous Case E017 of 2024) [2025] KEELC 1328 (KLR) (19 March 2025) (Judgment)

Neutral citation: [2025] KEELC 1328 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND MISCELLANEOUS CASE E017 OF 2024**

LN MBUGUA, J

MARCH 19, 2025

**IN THE MATTER OF LAND PARCELS NO. NANYUKI
B12/2/2787/XII/40 & NANYUKI B4/31/2787/XII/64**

IN THE MATTER OF SECTION 17, 18, 56 AND 57 OF THE TRUSTEES ACT

AND

**IN THE MATTER OF APPLICATION BY CWK AS TRUSTEE FOR CONSENT
OF COURT TO ALLOW HER TO SELL THE PROPERTIES FOR PURPOSES
OF INVESTING THE PROCEEDS FOR THE BENEFIT OF THE MINOR**

JUDGMENT

1. This suit was commenced by way of an ex parte chamber summons application dated 7/11/2024 where the applicant CWK seeks orders from this court to sell the parcels of land known as L.R No. B12/2/2787/XII/40 Nanyuki and L.R No. b4/31/2787/XII/64 Nanyuki (the suit properties) registered in the name of James Kigera Ngunga. She also pray that the cost relating to the sale of the aforementioned properties be catered for from proceeds of sale.
2. The application is premised on grounds on the face of the application and in the supporting affidavit of the applicant. She contends that the two suit properties were registered in the name of James Kigera Ngunga (the deceased). That upon his demise, the two properties were distributed to the applicant holding $\frac{1}{2}$ a share for herself and the other $\frac{1}{2}$ share in trust for the children of her late sister JN , one of whom is a minor vide a confirmed grant issued on 25/4/2024 in Nyeri HCFP&A/E003 of 2023.
3. She contends that in order to efficiently take care of the minor child of her sister including education and medical expenses she intends to sell by private treaty the two parcels and to use the proceeds thereof for the upkeep of the beneficiaries and to invest in another property for their benefit. She contends that there is an intended purchaser who has already deposited Kshs. 500,000.
4. The matter was mentioned in court on 20/11/2024 when the court gave directions for the applicant to file further affidavit giving better particulars regarding the needs of the children of Julia Noki Kigera.



The applicant has since filed an affidavit containing several annexures including details relating to education needs of MWN , the minor child of JN .

5. I have considered all the issues raised herein and I find that even if these are ex parte proceedings, the court has a duty in principle to look at what the application is all about and what it seeks; See SCOK in Gideon Sitelu Konchellah v Julius Lekakeny Ole Sankuli & 2 Others (2018) eKLR where the court stated that;

“It is not automatic that for any unopposed application the court will as a matter of course grant the sought orders. It behooves the court to be satisfied that prima facie with no objection, the application is meritorious and the prayers may be granted”

6. Thus the applicant has to avail sufficient evidence to warrant the issuance of the orders sought. To start with, I find that apart from the two suit properties, the confirmed grant indicates that the applicant was also to hold in her own name and in trust for the beneficiaries of JN the following properties;

- a. ABSA Bank A/C No. 074821xxx
- b. Co-operative Bank A/C No. 00-A-1182-xxx-x
- c. Co-operative Union Nyeri A/C No. 2108-02-xxx
- d. Shares in Kenya Airways Limited.
- e. Mercedes Benz Registration No. KVD xxxx
- f. Volvo Registration No. KRF xxxx

The aforementioned properties are to be found on the last schedule of the confirmed grant (schedule 3).

7. At paragraph 7 of her further affidavit filed on 17/2/2025, the applicant contends that she is struggling to take care of the needs of the children of the deceased (Julia) as the two vehicles are only worth Kshs. 70,000 and 65,000 respectively. While the Co-operative union Account No. 2108-02-xxx only has a balance of Kshs. 119,056. The other two banks that is ABSA Bank Account No. 094821xxxx and Cooperative Bank Account No. 00-A-1182-xxx-x have negative balances. She has availed a document marked “CWK-003” to support the aforementioned averments.
8. A perusal of the aforementioned annexures in relation to bank accounts reveal that the applicant has availed just one statement for Taifa Sacco A/C No. 01-0102-008-0xxxx which is the one having a balance of Kshs. 119,056.70 in the name of James Njuguna Kigera. Thus, the particulars of the bank statements mentioned in the last schedule of the confirmed grant as well as the shares in Kenya Airways have not been availed by the applicant.
9. Further in Paragraph 6 of the same further affidavit, the applicant contends that she is also struggling to pay land rates amounting to Kshs. 505,012 situated in Nairobi and in Nyeri. True the applicant has availed various receipts indicating that she is paying hefty rates for properties in Nairobi namely; Nairobi Block 183/3835 (Kshs. 126,957 + 50,000), Nairobi Block 183/3851 (Kshs. 121,262 + 60,000) and Nairobi Block 183/2556 (Kshs. 185,793 + 50,000). It is noted that these are her own personal properties and they have nothing to do with the rights and interests of the beneficiaries of JN . If anything, those properties in addition to seven more properties listed in schedule 2 in the confirmed grant are a telltale sign that the applicant has numerous immovable properties scattered across the country, but she now wants the only immovable properties relating to the beneficiaries of JN to be sold! a rather sad state of affairs for someone who is taking care of her deceased sister’s children.



10. The provisions of Article 10 of *the Constitution* entreat this court to uphold the national values and principles of governance while interpreting *the Constitution* or any other law. To this end, the provisions of Sub Section 2 thereof outline the National Values and Principles of Governance to include (b) human dignity, equity, social justice, inclusiveness, protection of the marginalized. I hold the view that the court would not be upholding these national values if the court was to grant the order sought taking into account all the circumstances of this case including but not limited to the fact that the applicant was economical with the truth regarding the value of the amounts held in banks and shares as set out in schedule 3 in the confirmed grant and that herself she certainly has numerous properties, yet the beneficiaries of JN have no other immovable properties except the two suit properties.
11. The dictates of justice and equity demand that the two properties should not be sold. At least not at this particular time when the details of the moveable properties have been concealed. In light of the following analysis I find that this suit is not merited. The same is hereby dismissed.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 19TH DAY OF MARCH 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Wanjohi for the applicant

Nancy Mwangi – Court Assistant

