



In re MLM (Minor) (Environment and Land Miscellaneous Application E024 of 2024) [2025] KEELC 3848 (KLR) (7 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3848 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E024 OF 2024**

AK BOR, J

MAY 7, 2025

IN THE MATTER OF MLM (MINOR)

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO REGISTER A CHARGE OVER GATURI/WERU/8XX8

IN THE MATTER OF

CNN APPLICANT

RULING

1. The Applicant, CNN filed the application dated 19/9/2024 ex-parte, seeking leave to use the title deed for Gaturi/Weru/8XX8 as security for a loan. She also sought leave for the creation and registration of a charge over the land in favour of Absa Bank Kenya PLC. Additionally, she sought leave to be granted to the Land Registrar, Embu to register a charge over the land in favour of Absa Kenya PLC.
2. The application was made on the grounds that together with her spouse, EMM, the Applicant purchased Gaturi/Weru/8XX8 and they were jointly registered as proprietors to hold it in trust for their son, MLM who is 14 years old. She averred that they wish to use the suit property as collateral for a mortgage facility from Absa Bank Kenya PLC and use the proceeds from the loan to construct their family or matrimonial home on the suit property. She averred that the minor, whose name is entered on the register cannot legally transact dealings on the land which warranted the application for leave.
3. She stated that her spouse had consented to creation and registration of the charge and that she is employed by the [particulars withheld] Company, this will enable her repay the loan in full as and when it falls due. The Applicant and EMM swore the affidavits in support of the application and attached copies of their certificate of marriage, certificate of birth for the minor and title deed over the land registered in the name of EMM and CNN to hold in trust of MLMM (minor). She also exhibited copies of the letter of offer from Absa Bank Kenya Ltd and her pay slip.



4. The Applicant filed written submissions to the application which the court has considered. She submitted that Section 27 of the [Land Act](#) and Section 47 of the [Land Registered Act](#) expressly preclude minors whose names have been entered in a register from conducting any dealings with respect to land for lack of capacity necessitating this application. She added that she and her spouse being the joint purchasers of the suit property had a consensus and were agreeable to the land being used as security and that the proceeds of the loan would be used for the development of the land by constructing a home in the best interest of the child. She also cited Article 43 of the [Constitution](#) of Kenya which guarantees every person the right to adequate, safe and secure housing, which is what she and her husband seek to offer their child.
5. The issue for determination is whether the court should grant leave to the Applicant to use the suit property held in trust for their son who is a minor as security for a loan.
6. The law is clear that minors lack capacity to deal in land transactions. Section 27 of the [Land Act](#) provides that 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.
7. Section 47 of the Land Registration Act affirms that although a minor may be registered in trust, they lack legal capacity to transact on the land.
8. Section 17 (1) of the [Trustee Act](#) enables a trustee to raise money required to pay or apply capital money subject to the trust by the sale, conversion, calling in or mortgage of all or any part of the trust property for the time being in their possession.
9. The power of the court to authorise dealings in trust property is contained in Section 56 of the [Trustee Act](#) which provides that where property is 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 the purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustee either generally or in any particular instance the necessary power for 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.
10. The section also grants the court discretion to rescind or vary an order made under this section or may make any new or further order.
11. Applications to the court under that section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.
12. In this case, the Applicant intends to charge the land in order to secure a loan for the construction of a home for the benefit of the minor. Both trustees are in agreement and have given the assurance that the loan funds will be used for the construction of a family home, thereby enhancing the welfare of the child. The Applicant has also provided evidence that she has an income. The court is also guided by Article 53(2) of the [Constitution](#) of Kenya, which stipulates that a child's best interests are of paramount importance in every matter concerning the child.
13. Taking all the above into consideration, the court is satisfied that the application is made in the best interest of the minor and allows the application dated 19/9/2024. The court makes no order as to costs.

DELIVERED VIRTUALLY AT EMBU THIS 7TH DAY OF MAY 2025.

K. BOR



JUDGE

In the presence of: -

Mr. Cyprian Lugutu for the Applicant

Diana Kemboi- Court Assistant

