



**Muniu & another (Both Suing as the Administrators of the Estate of the Late Benson Muniu Kabari alias Benson Munio) (Environmental and Land Originating Summons E015 of 2024) [2025] KEELC 4273 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4273 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E015 OF 2024  
MAO ODENY, J  
JUNE 5, 2025**

**IN THE MATTER OF**

**JOHN KABARI MUNIU ..... 1<sup>ST</sup> APPLICANT  
ISAAC KARANJA MUNIU ..... 2<sup>ND</sup> APPLICANT  
BOTH SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE  
BENSON MUNIU KABARI ALIAS BENSON MUNIO**

**JUDGMENT**

1. By Originating Summons dated 22<sup>nd</sup> November, 2024, the Applicants sought the following orders:
  1. That the trust created vide a Rectified Certificate of Confirmation of a Grant issued to John Kabari Muniu and Isaac Karanja Muniu on 6<sup>th</sup> December, 2022 be declared in favour of Jane Wambui Muniu, Paul Njenga Muniu and Racheal Muthoni Muniu as follows:
    - a. That land parcel no. Nakuru/Rare/Gichobo/68 which was held in trust by Isaac Karanja Muniu be sub-divided and distributed as follows:
      - i. Jane Wambui Muniu of ID No. 11XXXXX to be given 2 ½ acres.
      - ii. Paul Njenga Muniu of ID No. 871XXXXX to be given 3 acres.
      - iii. Racheal Muthoni Muniu of ID No. 238XXXXX to be given 2 ½ acres.
  2. That the costs of this application be provided for.

**Applicants' Submissions**

2. Counsel for the Applicants filed submissions dated 28<sup>th</sup> January, 2025 and identified the following issues for determination:



- a. What is the applicable law with respect to the Applicants' claims?
  - b. Whether the 2<sup>nd</sup> Applicant holds the property known as Nakuru/Rare/Gichobo/68 as trustee for Jane Wambui Muniu, Paul Njenga Muniu and Rachael Muthoni Muniu.
  - c. Whether the reliefs sought can be issued?
3. On the first issue, counsel relied on Order 37 Rule 1 of the Civil Procedure Rules and submitted that equitable principles relating to trust claims fall under this Rule. Counsel also submitted that a person claiming under trust may apply and the same shall be determined upon examination of the issues and relied on the case of *NWK vs JKM & Another* [2013] eKLR.
  4. On the second issue as to whether the 2<sup>nd</sup> Applicant holds the suit property known as Nakuru/Rare/Gichobo/68 as a trustee for Jane Wambui Muniu, Paul Njenga Muniu and Rachael Muthoni Muniu. Counsel submitted that the Applicants have exhibited a copy of the rectified certificate of confirmation of a grant dated 6<sup>th</sup> December, 2022 and a copy of a title issued in the name of the 2<sup>nd</sup> Applicant clearly showing that the 2<sup>nd</sup> Applicant has been registered as a trustee and relied on Sections 107, 108 and 109 of the *Evidence Act*.
  5. Counsel submitted that the trust has been noted in the register as shown on the title deed issued in the name of the 2<sup>nd</sup> Applicant.
  6. On the third issue, counsel submitted that since a trust has already been created, the only way to have the beneficiaries' shares transferred to them is by determining the existing trust in their favour. Counsel further submitted that the intended beneficiaries are already in possession of the suit property and urged the court to allow the originating summons as prayed.

### **Analysis and Determination**

7. The issue for determination is whether the orders sought in the originating summons dated 22<sup>nd</sup> November, 2024 can be granted. The Originating summons has been brought under the provisions of Order 37 Rule 1 of the Civil Procedure Rules which provides as follows:

The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir, or legal representative of a deceased person, or as cestui que trust under the terms of any deed or instrument, or as claiming by assignment, or otherwise, under any such creditor or other person as aforesaid, may take out as of course, an originating summons, returnable before a judge sitting in chambers for such relief of the nature or kind following, as may by the summons be specified, and as circumstances of the case may require, that is to say, the determination, without the administration of the estate or trust, of any of the following questions:

- a. any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or cestui que trust;
- b. the ascertainment of any class of creditors, devisees, legatees, heirs, or others;
- c. the furnishing of any particular accounts by the executors, administrators or trustees, and the vouching, when necessary, of such accounts;
- d. the payment into court of any money in the hands of the executors, administrators or trustees;



- e. directing the executors, administrators or trustees to do, or abstain from doing, any particular act in their character as executors, administrators or trustees;
  - f. the approval of a sale, purchase, compromise or other transaction;
  - g. The determination of any question arising directly out of the administration of the estate or trust.
8. From the title issued on 12<sup>th</sup> March 2024 and the rectified Certificate of Confirmation of grant dated 6<sup>th</sup> December 2022, it indicates that the 2<sup>nd</sup> Applicant holds the suit properties in trust for Jane Wambui Muniu, Paul Njenga Muniu and Rachael Muthoni Muniu. This fact is verifiable.
9. I have considered the pleadings, the submissions by counsel, the relevant documents attached and find that the Originating Summons has merit and is therefore allowed as prayed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 5<sup>TH</sup> DAY OF JUNE 2025.**

**M. A. ODENY**

**JUDGE**

