



**In re HNN (Environment & Land Miscellaneous Case  
E0113 of 2024) [2024] KEELC 6212 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 6212 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND MISCELLANEOUS CASE E0113 OF 2024**

**LC KOMINGOI, J**

**JULY 4, 2024**

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

**AND**

**IN THE MATTER OF THE SALE OF PLOT CERTIFICATES  
NO.771 & 772 OVER TITLE NUMBER 12715/545 SYOKIMAU**

**IN THE MATTER OF**

**HNN ..... APPLICANT**

**RULING**

1. This is the Originating Summons dated 18<sup>th</sup> March 2024 brought under;  
  
(Article 53 of the Constitution of Kenya, Order 37 of the Civil Procedure Rules (Cap 21, Laws of Kenya) and Sections 56 and 57 of the Trustees Act and all other enabling provisions of the Law)
2. It seeks Orders;
  1. Spent
  2. Spent
  3. That the Applicant herein be granted leave and approval to dispose by sale, Plot Certificates No. 771 & 772 over Title Number 127XX/54XSyokimau held in trust for ABM (a minor).
  4. That the proceeds of the sale be applied towards the development of Bright Future College located on Loitokitok/Olkaria 30XX which is also held in trust for ABM .
  5. That the costs of the Application be provided for.
3. The grounds are on the face of the Originating Summons and are set out in paragraphs (a) to (i).



4. The originating summons is supported by the Affidavit of HNN, the Applicant herein sworn on the 18<sup>th</sup> March 2024.

She depones that she has been the minor's trustee since 2016 after the demise of R.M.N. That the minor was by then four (4) years old.

5. It is her case that she intends to dispose of the suit properties in order to develop the Bright Future Technical College which is on land parcel NO. Loitokitok/Okaria/30XX, which is owned by the Applicant in trust for the minor.

6. Mr. Kinyanjui, counsel for the Applicant argued the application on 29<sup>th</sup> April 2024.

7. He also tendered written submissions dated 19<sup>th</sup> June 2024. Counsel raised one issue for determination; whether the court has the authority to allow a trustee to dispose of property in the benefit of a minor.

8. Reliance was placed upon Order 37 Rule 1 of the Civil Procedure Rules Sections 4, 11, 13, 17, 33, 34 and 41 of the Trustee Act, and Section 24 of the Land Registration Act. He also put forward the case of ELC Misc. Application No. 76 of 2016; and Misc. E044 of 2021.

9. He further submitted that the Applicant's decision to dispose of the plots is not for self-gain but for the best interest of the minor and to also generate income to cater to the minor's needs who later on will be joining Junior Secondary School.

He prays that the Application be allowed.

10. I have considered the Originating Summons, the grounds and the Affidavit in support. The issue for determination is whether the application is merited.

11. Sections 56 of the Trustee Act provides that;

“Power of court to authorize dealings with trust property

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 transactions, 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.
2. The court may, from time to time, rescind or vary an order made under this Section, or may make any new or further order.
3. An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.”

12. Section 57 of the Trustee Act provides that;

“Persons entitled to apply for orders

1. An order under this Act for the appointment of a new trustee, or concerning any interest in land, stock or thing in action subject to a trust, may be made on



the application of any person beneficially interested in the land, stock or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

2. An order under this Act concerning any interest in land, stock or thing in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

In the case of *Re Eunice Wanjeri Njenga* (2013)eKLR held:

“.....In summary the general duties of trustees in relation to the trust property are to safeguard the assets of the trust, to invest any trust money in his or her hands, and to distribute the assets to the beneficiaries and satisfy any claims of the beneficiaries. With relation to the beneficiaries, trustees are under a duty to maintain equality between beneficiaries and to provide accounts and information to the beneficiaries. Section 56 of the *Trustees Act* cited in the foregoing also gives this court power to authorize specific investments upon application by a trustee, and together with Section 59 permits this court to order that costs of a sale and application to the court be met from the proceeds of sale of a trust property.”

13. I have considered the foregoing provisions and the above authority I am not satisfied that the Applicant has made out a good case for the grant of the orders sought.
14. There is nothing to show that who are the managers of Bright Future Technical College; whether it is registered etc.
15. The Applicant has just attached photographs which could have been taken anywhere. It is not clear if such an institution exists.
16. The Applicant intends to dispose of the two plots which are fixed assets to plough into a college whose success is not even guaranteed.
17. The court is apprehensive that the minor who is a beneficiary may be left with nothing by the time she turns eighteen.
18. It is well settled that the minor is incapable of giving consent at this stage.
19. The authorities cited by the Applicant the distinguishable in that in ELC Misc.76 of 2016, the Applicant was the biological mother of the two minors.
20. The upshot of the matter is that I find no merit in the Originating Summons and the same is dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 4<sup>TH</sup> DAY OF JULY 2024.**

**L. KOMINGOI**

**JUDGE.**

In the presence of:

Mr. F. Onyango for Mr. S. Kinyanjui for the applicant.

Court Assistant - Mutisya

