



**SOA v Land Registrar, Kisumu (Environment and Land Miscellaneous Application E003 of 2023) [2023] KEELC 21300 (KLR) (7 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21300 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E003 OF 2023**  
**SO OKONG'O, J**  
**NOVEMBER 7, 2023**  
**IN THE MATTER OF AN APPLICATION FOR LEAVE TO**  
**DEAL WITH LAND HELD IN TRUST FOR A MINOR**

**BETWEEN**

**SOA ..... APPLICANT**

**AND**

**LAND REGISTRAR, KISUMU ..... RESPONDENT**

**RULING**

1. Section 54 and 56 of the *Trustee Act*, Chapter 167 Laws of Kenya provide as follows:

54. Where an infant is beneficially entitled to any property, the court may, with a view to the application of the capital or income thereof for the maintenance, education or benefit of the infant, make an order—

- (a) appointing a person to convey the property; or
- (b) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of the stock, or to receive the dividends or income thereof, or to sue for and recover the thing in action, upon such terms as the court may think fit.

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- (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.

(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.

2. The applicant is registered as the proprietor of all that parcel of land known as Title No. [particulars withheld] measuring 0.11 hectares (hereinafter referred to as “the suit property”) to hold the same in trust of BAOJ, a minor (hereinafter referred to only as “the minor”). The applicant was registered as the proprietor of the suit property on 4<sup>th</sup> September 2020. What is before me is an application brought by the applicant by way of an ex-parte Notice of Motion dated 2<sup>nd</sup> January 2023 seeking leave to sell a portion of the suit property measuring 0.05 hectares and use the proceeds of sale to develop the remaining portion of the property for the benefit of the minor. The applicant has also sought an order that the respondent be directed to accept the documents presented to him for registration by the applicant in respect of the suit property.

3. The applicant has averred that he is holding the suit property in trust for the minor. The applicant has averred that he purchased the suit property and caused the same to be registered in his name as a trustee of the minor who is his grandson for the minor’s benefit. The applicant has averred that he has discussed with the parents of the minor how the suit property can be utilised to serve the best interest of the minor. The applicant has averred that they have agreed that the minor can benefit more from the property if the property is developed with a residential building so that the rental income from the building can be used to give the minor a decent education and also to meet his other needs. The applicant has averred that it is necessary in the circumstances for half of the property to be sold and the proceeds thereof used to develop the remaining half. The applicant has averred that the parents of the minor have agreed to the proposal. The applicant has annexed to the affidavit in support of the application among others a copy of the title deed for the suit property and the agreement of sale through which the applicant acquired the property together with the minor.

4. Due to the nature of the application and the interest involved which was that of a minor, the applicant attended court and was examined by the court on oath on his affidavit in support of the application and the application generally. During the examination, the applicant reiterated the grounds on the face of his application and the supporting affidavit. The father and mother of the minor also attended court and confirmed to the court that they were in support of the applicant’s application.

5. I have considered the application together with the affidavit filed in support thereof. I have also considered the evidence that was tendered in court by the applicant and the statements given in court by the father and mother of the minor. From the provisions of the [Trustee Act](#), Chapter 167 Laws of Kenya which I have cited earlier in this ruling, this court has the power to grant the orders sought. I am satisfied that the minor is the beneficial owner of the suit property and that the applicant was registered as an owner of the property to hold the same in trust for the minor. I have noted that the minor is in Grade [particulars withheld] in a private school. I am in agreement with the applicant that an undeveloped piece of land may not benefit the minor much at this stage in his life. I am satisfied that the proposed sale of a half portion of the suit property for the purposes of developing the remaining half would serve the best interest of the minor.

6. In conclusion, I hereby make the followings orders;



1. The applicant is hereby authorised to subdivide all that parcel of land known as Title No. [particulars withheld] (the suit property) into two (2) equal portions allowance being given to the access roads to the said portions as may be necessary.
2. One half portion of the suit property shall remain registered in the name of the applicant, SOA as a trustee of BAOJ - a minor and shall not be sold while BAOJ remains a minor save with leave of the court.
3. The applicant is authorised to sell the other one-half portion of the suit property and to use the proceeds of sale to develop the remaining one-half portion of the suit property in the name of SOA as a trustee of BAOJ - a minor.
4. The costs of the application to be borne by the applicant.

**DELIVERED AND DATED AT KISUMU THIS 7<sup>TH</sup> DAY OF NOVEMBER 2023**

**S. OKONG'O**

**JUDGE**

RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO  
CONFERENCING PLATFORM IN THE PRESENCE OF:

N/A for the Applicant

Applicant present in court

N/A for the Respondent

Ms. J. Omondi-Court Assistant

