



**In re PMK (Minor) (Miscellaneous Application E039 of 2021)
[2022] KEELC 3667 (KLR) (5 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3667 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
MISCELLANEOUS APPLICATION E039 OF 2021**

JG KEMEI, J

MAY 5, 2022

IN THE MATTER OF SECTION 13, 17, & 56 OF THE TRUSTEES ACT, CAP 167

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IN THE MATTER OF THE LAND PARCEL NO CHANIA/GITUAMBA/T.XXX

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IN THE MATTER OF PMK (MINOR)

IN THE MATTER OF

JKM 1ST APPLICANT
PNM 2ND APPLICANT
BNM 3RD APPLICANT
MMM 4TH APPLICANT
MWM 5TH APPLICANT

JUDGMENT

1. The applicants filed the instant notice of motion dated 7/10/2021 seeking orders that;
 - a. Spent
 - b. That the honourable court allow the 5th applicant MWM to sell the parcel of land Chania/Gituamba/T.XXX on behalf of the minor PMK.
 - c. That the honourable court do and hereby empower MWM to dispose of Chania/Gituamba / T.XXX on behalf of PMK (minor).
 - d. Costs be in cause.



2. The application is supported by the grounds thereto and the affidavit of MWM on her own behalf and on behalf of the co-applicants. She deposed that she is the sister of PMK, a minor and hold the title Chania/Gituamba/T.XXX for the said minor. That they reside on Chania/Kanyoni/XXX which property was compulsory acquired by the Government of Kenya and duly compensated. That from the compensation monies they have purchased land parcel No Chania/Mataara/XXXX, which property is held in trust for herself and the minor. She implored the court to allow her to dispose the suit land to enable her raise monies to relocate and construct a house on the newly acquired parcel Chania Mataara/XXXX. The copy of title for this parcel was annexed.
3. In their submissions she reiterated the contents of her affidavit and relied on the provisions of section 13, 17 and 56 of the Trustees Act as well as the inherent powers of the court set out in section 3A of the Civil Procedure Act.
4. In her further submissions she stated that by selling the suit land the interests of the minor shall have been taken care of by the construction of the new house. In that regard she relied on the cases of In the Matter of GW & Another (Minors) (2016) eKLR and in the Re Eunice Wanjeri Njenga (2013) eKLR.
5. Having read and considered the application, the written submissions and all the material placed before the court, the main issue is whether the application is merited.
6. Before I delve into the gist of the application, I would like to look into the competency of the application. Order 37 rule 1 of the Civil Procedure Rules, 2010 provides the manner in which such application should be commenced in a court of law. It states as follows;

“Who may take out originating summons and in respect of what matters [order 37, rule 1.]

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.’

7. In the instant case the application has been brought under a notice of motion instead of an originating summons and in my view contrary to the provisions of the above order and therefore the application is incompetent.
8. It is therefore struck off with no orders as to costs.
9. It is so ordered.

DELIVERED, DATED AND SIGNED AT THIKA THIS 5TH DAY OF MAY 2022 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Applicant 1 – absent

Applicant 2 – absent

Applicant 3 – absent

Applicant 4 – absent

Applicant 5 - absent

Court Assistant - Phyllis

