



**In re AGN & SMN (Minors) (Environment and Land Miscellaneous Application  
E024 of 2022) [2022] KEELC 13387 (KLR) (4 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13387 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E024 OF 2022  
A KANIARU, J  
OCTOBER 4, 2022  
IN THE MATTER OF SECTIONS 13, 17, & 56 OF THE TRUSTEES ACT CAP 167  
AND  
IN THE MATTER OF AN APPLICATION FOR VESTING  
ORDER TO SALE OF L.R. NO. GATURI/WERU/7770  
AND  
IN THE MATTER OF AGN & SMN (MINORS)  
ESTHER WANJA KARIUKI  
LAVENDER MURUGI NJIRU.....APPLICANTS**

**JUDGMENT**

1. By an originating summons dated 16/9/2022 and filed in court on 20/9/2022, the two applicants – Esther Wanja Kariuki (1<sup>st</sup> applicant) and Lavender Murugi Njiru (2<sup>nd</sup> applicant) – implore the court to allow them to sell land parcel No. Gaturi/weru/7770 (“Suitland” hereafter) in order to use the proceeds of sale to perform and/or execute various tasks for and on behalf of some minors under their care. The two applicants are mother and daughter respectively and the minors under them are school going children for whom school fees amounting to Kshs. 196, 910 is required to be paid. It appears clear that disposal of the suit property through sale is the only way that the fees can be raised.
2. The statutory anchorage of the matter before me is Order 37 rule 1(f) of the *Civil Procedure Rules*, 2010 and Section 3a of the *Civil Procedure Act* (Cap 21). The matter has three (3) prayers in all, which I set out here *Ipssisma verba*:
  1. That the applicant be and is hereby given vesting orders to sale (sic) all that property known as Gaturi/weru/7770 and the proceeds realized from the sale of the same be applied in the settlement of the following:
    - a. The costs of and incidental to the valuation of the said suit property.



- b. The costs of and incidental to the transfer of the said suit property.
  - c. The payment of school fees for the minors in this suit.
  - d. The investment of the balance of the sale in a call account for the purpose of future application for the education of the minors.
2. That the honourable court be pleased to issue directions on the service of the originating summons application herein.
  3. That the costs of and incidental to this application be provided for.
3. The grounds advanced in support of the application include, inter alia, that the 1<sup>st</sup> applicant was issued with the title deed for the suit property on 23/11/2018 in the names of the subject minors and herself after she purchased the property; that the minor's names were included in registration of the property to protect their interests in case of any eventuality; that the 1<sup>st</sup> applicants two minors and also the 2<sup>nd</sup> applicants two minors are in various schools and it is the 1<sup>st</sup> applicant's responsibility as the family head to cater for their needs, which include fees and other items necessary in their studies; and finally that the minor's future is also well secured by registration of other properties in their names.
  4. The originating summons came with a supporting affidavit which explicated and/or amplified the grounds advanced in support of the matter. To the supporting affidavit is attached various annexures including the copy of the title deed of the suit land, various copies of birth certificates for the minors, fee structure forms for the minors, and some title deeds for other properties in which the minors have ownership interests.
  5. Counsel for applicants filed submissions on 27/9/2022. From the submissions, it is clear that the 1<sup>st</sup> applicant is mother to 2<sup>nd</sup> applicant and two minors while the 2<sup>nd</sup> applicant herself is mother to two other minors. The submissions also highlighted the applicable statutory law, notably Order 37 rule 1 of *Civil Procedure Rules*, 2010, and Sections 13 and 17 of the *Trustee Act*, all of which entitle the applicants and enable the court to act as required and grant the prayers sought. A decided case – *In Re Eunice Wanjeri Njenga*: ELC Misc. Civil Suit No. 62 of 2013 [2013 eKLR] - was also cited and made available to the court. It is a decision that has broad similarities with the matter at hand and which invoked and relied largely on the same law cited by the applicant's counsel in this matter.
  6. Further, the court was told that the applicants are acting in the best interests of the minors as required of them under Article 53 (2) of the *Constitution* of Kenya and Section 4(1) of the *Children's Act*.
  7. I have considered the originating summons as filed and the submissions of the learned counsel for the applicants. This is a fairly simple and straightforward matter. It is clear to me that the first applicant is a single mother and family head and the 2<sup>nd</sup> applicant and the minors are all under her care. She has shown that she holds the suit property in trust for the 2<sup>nd</sup> applicant and the minors. In fact the 2<sup>nd</sup> applicant and some minors also appear on the title deed as owners. Under Section 13 of the *Trustee Act*, she has power to sell the suit property. Section 13 of the *Trustee Act* reads as follows:

“13(1) where a trust for sale or a power of sale of property is vested in a Trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting the title or evidence of title or other matter as the trustees think fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.”



- (2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof”

8. Further, under Section 56 of the *Trustee Act*, the court is empowered to authorize dealings in trust property. The section is as follows:

Section 56

- (1): Where, in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, lease or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the court expedient, but can not 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 conditions, if any, as the court may think fit, and may direct in what manner any money authorized to be expended, and the cost 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.”

9. It is clear to me that the 1<sup>st</sup> applicant is a trustee on behalf of the minors named in this matter. Her adult daughter is the 2<sup>nd</sup> applicant and, like her, wants the suit property sold for the reasons aforestated. It is also clear that both applicants are acting in the best interests of the minors. The manner in which they propose to use the proceeds of sale seems sound and prudent to me. Accordingly, I grant prayer I as spelt out at paragraph 2 of this judgement, which is the same manner it is asked for as prayer No. 1 (a) (b) (c) and (d) in the application.

Prayer 2 is asking the court to issue directions as to service. The court directs that the decree or order extracted after delivery of this judgment be served if and when required by any of the offices involved in the process of sale and in the subsequent change of ownership. Prayer 3 is about costs. The court has decided to make no order as to costs.

**JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 4<sup>TH</sup> DAY OF OCTOBER, 2022.**

**A.K. KANIARU**

**JUDGE**

10.2022

