



**In re Estate of Francis Gatiba (Deceased) (Succession Cause 2215 of 1995)  
[2025] KEHC 4513 (KLR) (Family) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4513 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2215 OF 1995  
HK CHEMITEI, J  
APRIL 8, 2025  
IN THE MATTER OF THE ESTATE OF FRANCIS GATIBA (DECEASED)**

**BETWEEN**

**GWM ..... 1<sup>ST</sup> APPLICANT**

**DM ..... 2<sup>ND</sup> APPLICANT**

**AND**

**THE LAND REGISTRAR, NAIROBI ..... 1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling relates to the application dated 29<sup>th</sup> January, 2024 filed by GWM and seeking for orders that:-
  - a. Spent.
  - b. This honourable court be pleased to issue orders that the Applicants be and are hereby permitted and empowered by the court to sell the parcel of land known as Nairobi/block XXX/XXXX and the same be applied in the following:-
    - i. The payment of school fees and school related expenses.
    - ii. The investment of the balances of the sale for the purpose of future application in the education of the minor.
  - c. The honourable court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.



2. The application is based on the grounds thereof and supported by affidavit and further affidavit sworn by GWM on 29<sup>th</sup> January, 2024 and 28<sup>th</sup> February, 2024 respectively.
3. She avers inter alia that she has the authority, granted by the 2<sup>nd</sup> Applicants, an adult, to swear this affidavit. On 12<sup>th</sup> February, 1989, her grandfather, FGM, who was the registered owner of the land parcel number Dagoretti/ Uthiru/XXX passed away. His estate was subsequently distributed among his beneficiaries in this succession cause, as per the confirmed grant issued on 9<sup>th</sup> February, 2014. Following this, the land was subdivided with each beneficiary receiving a portion. She was allocated Portion D, originally known as Dagoretti/ Uthiru/XXXX, which was later converted to Nairobi/block XXX/XXXX, the subject of this application.
4. That she is the mother and legal trustee of IN, a minor, in relation to the parcel of land known as Nairobi/block XXX/XXXX, where she is the registered owner and holds half the share in trust for the minor. The 2<sup>nd</sup> Applicants has consented to the sale of the land for both his and the minor's benefit. Having completed his secondary education, the second Applicant is set to pursue a diploma at Mt. Kenya University. She has been solely raising her children with support from her mother. However, following her mother's passing in 2017, she took full responsibility for providing school fees, related educational expenses and general upkeep, including for her minor son. Due to the current economic difficulties, she is facing financial strain and urgently requires funds to ensure the minor's education continues uninterrupted.
5. They are, therefore, seeking the court's approval to sell the land to cover the minor's school fees of Kshs.40,533/= per year for the next four years at [Particulars Withheld], Chuka. The proceeds from the sale will be used primarily for school fees, with any remaining balance allocated for investment in future expenses, such as education and medical costs for her son's benefit. The proposed investment involves real estate, which is expected to provide long-term financial stability through potential rental income and capital appreciation for her children as they pursue their education.
6. She and the second Applicants intend to sell the land, including the minor's share, to a willing buyer, Isiah Mwaura Ndoho, who has offered Kshs 8,400,000/=. If the court does not grant the requested orders, she will struggle to meet the minor's school and upkeep expenses, as she is not financially stable enough to cover these needs on her own.
7. The application is unopposed and there are no written submissions filed.

### **Analysis And Determination**

8. I have gone through the applications, responses thereto and the rival submissions filed by the parties, and address them as follows:-
9. Although the application is unopposed, it is the duty of the Court to nevertheless subject it to a merit evaluation in accord with the applicable laws and principles. Indeed, in *Gideon Sitelu Konchellah vs. Julius Lekakeny Ole Sunkuli & 2 others* [2018] eKLR the Supreme Court of Kenya held that:-

“...as a court of law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The Court is under a duty to look at the application and without making any inferences on facts point out any points of law, such as any jurisdictional impediment, which might render the application a non-starter. We see no such jurisdictional issue in the application before us.



Hence we have proceeded to consider the facts before us as against the jurisprudence for grant of stay orders set by this Court...”

10. The matter at hand must be handled however with great caution so that the minors immediate and future interest is taken care of. At the moment there is no evidence of the valuation of the subject property and the figures of Kshs.8,400,000 is from the Applicants.
11. The appropriate way is to have the same valued and the Applicants to provide a comprehensive process of investing the proceeds before the application is granted. This will ensure that no room is left for any illegal activity which the minor may question when he comes of age.
12. Consequently, I do order that:-
  - (a) A valuation exercise be undertaken by a duly registered valuer of land parcel number Nairobi/ block XXX/XXXX
  - (b) The above exercise be undertaken within 30 days from the date herein.
  - (c) A comprehensive investment plans of the sale proceeds be provided by the Applicants taking into consideration the immediate and future interest of the minor.
  - (d) The matter be mentioned before the Deputy Registrar of this court to oversee the above exercise.
  - (e) The parties be at liberty to apply.
  - (f) Costs in the cause.

**DATED SIGNED AND DELIVERED AT Nairobi VIA VIDEO LINK THIS 8<sup>TH</sup> DAY OF APRIL, 2025.**

**H K CHEMITEI**

**JUDGE**

