



Muchiri v Muchiri ((Trustee of the Minor NAW)) (Civil Case E021 of 2024) [2024] KEHC 10659 (KLR) (11 September 2024) (Ruling)

Neutral citation: [2024] KEHC 10659 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL CASE E021 OF 2024
FN MUCHEMI, J
SEPTEMBER 11, 2024
IN THE MATTER OF SECTIONS 56, 57 AND 65 OF
THE TRUSTEE ACT (CAP 167) LAWS OF KENYA
AND
IN THE MATTER OF RUIRU/RUIRU EAST BLOCK 2/40084**

BETWEEN

SALOME WANJIRU MUCHIRI APPLICANT

AND

**SALOME WANJIRU MUCHIRI RESPONDENT
(TRUSTEE OF THE MINOR NAW)**

RULING

Brief Facts

1. The Originating Summons dated 31st July 2024 has been brought under Sections 56, 57 and 65 of the *Trustee Act*, Rules 2, 3 and 4 of the *Trustee Rules* and Order 37 Rule 1 of the *Civil Procedure Rules* seeking for the orders authorizing a charge over Ruiru/Ruiru East Block x/40xxx and the proceeds realized be applied in the purchase of Ruiru/Ruiru West Block x/2xx and costs of and incidental to the acquisition of Ruiru/Ruiru West Block x/2xx.

The Applicant's Case.

2. The applicant states that she is the mother of the minor NAW aged 15 years old and that she solely purchased LR No. Ruiru/Ruiru East Block x/40xxx in 2021 and registered the said parcel in her name and that of the minor. The applicant avers that the said property is their family home and has been valued at Kshs. 10 million.



3. The applicant states that she is seeking to charge the said property for a facility of Kshs. 6 million to enable her acquire another parcel of land namely LR No. Ruiru/Ruiru West Block x/2xx. The applicant further states that she has been assessed for the facility and found to be credit worthy. As such, the lender has approved the grant of the facility to the applicant.
4. The applicant did not wish to put in submissions but relied on her affidavit.

Issue for determination

5. The main issue for determination is whether the orders sought should be granted.

The Law

Whether the orders sought should be granted.

6. The legal framework governing the conduct and powers of trustees is entrenched in the *Trustee Act*. Section 56 of the *Act* grants the court with the jurisdiction to make appropriate orders in the following terms:-
 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.
7. Further Section 57 of the *Trustee Act* provides:-

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.

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.
8. It is therefore, trite that a trustee can exercise powers to pay or apply money for any purpose or in any manner, and can proceed to raise such money required by sale of any part of the trust property and the court has powers to make orders for the trustees to exercise the said powers of sale.
9. The applicant has moved the court appropriately in her capacity as a trustee of the minor NAW in respect of LR No. Ruiru/Ruiru East Block x/40xxx registered in her name whereas she holds the share



of the said minor in trust. Both the applicant and the minor are tenants in common. The applicant intends to charge the said property and purchase another property being LR No. Ruiru/Ruiru West Block x/2xx. The applicant deposes that she is a single mother and solely responsible for the care of the minor and she has previously registered other properties in her name and that of the minor.

10. *In Re Eunice Wanjeri Njenga* ELC Miscellaneous Civil Suit No. 62 of 2013 [2013] eKLR the court stated:-

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.

The applicant has averred that she intends to use the proceeds of the sale to invest in the remaining portion of the trust property, to pay for the beneficiaries' school fees and to buy a larger portion of land. Section 4(1) of the *Trustees Act* allows a trustee to invest any trust funds in the purchase of immovable property in Kenya and provides for certain conditions as to the tenure of the land to be purchased.

11. It is my considered view that the applicant has demonstrated that the proposed investment is prudent and in the best interests of the minor beneficiary and this court would be within the provisions of Section 56 of the act to grant the authority sought.
12. The applicant has further urged the court to give orders that the costs of and incidental to the acquisition of LR No. Ruiru/Ruiru West Block x/2xx and the instant application be realized from the sale of the trust property in question. Section 59 of the *Act* empowers the court to grant such orders. It provides:-

The court may order the costs and expenses of and incidental to an application for an order appointing a new trustee, or for a vesting order, or of and incidental to any such order, or any conveyance or transfer in pursuance thereof, to be raised and paid out of the property in respect whereof it is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court may seem just.

13. It is expected that the processing of the facility attracts costs which include legal fees and bank charges. The law is clear that it is within the powers of this court to authorise such costs as well as other incidental to the process.
14. It is my considered view that this Originating Summons is merited and is hereby allowed in the following terms:
- a. That the applicant is hereby authorized to undertake a charge over L.R. Ruiru/Ruiru East Block x/40xxx and utilise the loan facility to purchase L.R. Ruiru/Ruiru West Block x/2xx and to meet all the incidental costs thereof.
 - b. That there shall be no order as to costs.
15. It is hereby so ordered.



**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 11TH DAY OF
SEPTEMBER 2024.**

F. MUCHEMI

JUDGE

