



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MISC. APP NO. 113 OF 2012**

**H K & J W K.....APPLICANTS**

**VERSUS**

**W E W K & OTHERS.....INTERESTED PARTIES**

**RULING**

1. The Originating Summons dated 21<sup>st</sup> September 2012 seeks orders relating to Muguga/Kanyariri/*[particulars withheld]*.
2. The said property was initially registered in the name of the 1<sup>st</sup> applicant, H K. The property was transferred to the deceased, S M K, following dissolution of their marriage in High Court Divorce Cause No. 76 of 1980, where it was ordered by consent that the said property was to be assigned to the deceased to hold the same during her lifetime to hold as trustee for the children of the marriage to revert to the children after her demise. The said consent order was recorded on 29<sup>th</sup> May 1982.
3. S M K died on 16<sup>th</sup> May 2012. The 1<sup>st</sup> applicant, H K, and the 2<sup>nd</sup> applicant, J W K, her son, have moved the court for determination of questions as to whether the trust on the said property should be dissolved, whether the property should be distributed among the children as proposed and whether the 1<sup>st</sup> applicant should be appointed to execute all the necessary documents. They have named the other children of the marriage as interested parties.
4. The 1<sup>st</sup> respondent is one of the daughters of the deceased, she swore an affidavit on 23<sup>rd</sup> October 2012. Her case is that the trust created by the order of 16<sup>th</sup> January 1981 terminated on death on her mother's 16<sup>th</sup> May 2012. She avers that the applicants have no role at all in the matter of the distribution of the subject property.
5. Counsel for the parties filed written submissions explaining their respective clients' positions.
6. I have on file a letter from counsel for the interested parties indicating that the 1<sup>st</sup> applicant has died and therefore the suit has abated.
7. On the question of the abatement of the suit, I do note that the 1<sup>st</sup> applicant was not the sole applicant. His death does not therefore automatically terminate the suit so long as his co-applicant is still alive.
8. The consent order recorded in High Court Divorce Cause No. 76 of 1990 to set up the trust in question was clear that the trust was to hold during the lifetime of the deceased and the property the subject of the trust was to revert to the children after her demise. It follows therefore that the said trust terminated

automatically on 16<sup>th</sup> May 2012 on the death of the trustee.

10. The said trust did not assign any role to the applicants with respect to the trust property following the termination of the trust. There is therefore no legal basis on their part to commence the Originating Summons dated 21<sup>st</sup> September 2012.

11. I do hereby answer the questions in the Originating Summons as follows:-

(1) That the trust held over Muguga/Kanyariri/ *[particulars withheld]* by S M K terminated on 16<sup>th</sup> May 2012 and there is therefore nothing to dissolve;

(2) That the 1<sup>st</sup> applicant has no locus to propose distribution of the said trust property among the children of the marriage;

(3) There is no legal basis for the appointment of the 1<sup>st</sup> applicant, or any other person for that matter, to execute documents necessary for the partition of the said property and its transfer to the beneficiaries;

(4) As the 1<sup>st</sup> applicant is dead, the 2<sup>nd</sup> applicant shall bear the costs of the suit.

**DATED, SIGNED and DELIVERED at NAIROBI this 3<sup>rd</sup> DAY OF October 2014.**

**W. MUSYOKA**

**JUDGE**

In the presence of Mr. Okwiri advocate for the applicant.

In the presence of Mr. Mukule advocate for the interested parties.