

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC MISC APPLICATION NO. E182 OF 2024

VIRGINIA NDUTA KIMITI.....1ST

APPLICANT

GILBERT MWAURA NJUGUNA.....2ND

APPLICANT

LUCY NYOKABI NYOTA.....3rd

APPLICANT

GRACE NDUTA NJUGUNA.....4TH

APPLICANT

JOYCE NGOIRI NJUGUNA alias JOYCE NJOKI MUNGAI...5TH

APPLICANT

JUDY NYATHIRA KINYANJUI.....6TH

APPLICANT

JULIETA NJERI NJUGUNA alias JULIETA NJERI KILONZO...7TH

APPLICANT

=VERSUS=

CHIEF LAND REGISTRAR NAIROBI sued Through

THE ATTORNEY GENERAL.....
RESPONDENT

JUDGMENT

1. Before me for determination is the Notice of Motion dated 5th August 2024 brought under Order 31 Rule 1, 2 Order 37 Rule 1, 2 and 3 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and Sections 17, 18, 56 and 57 of the Trustees Act, in which the Applicant seeks the following orders:

a) Spent.

b) THAT the trust bestowed on the deceased Ruth Wanjiru be terminated and the property DAGORETTI/MUTUINI/T.49 held in common by the 2nd to 7th Applicants herein be registered absolutely in the name of Virginia Nduta Kimiti.

c) THAT the Respondent be ordered to facilitate the transfer and registration of that parcel of land DAGORETTI/MUTUINI/T.49 in favour of Virginia Nduta Kimiti.

d) THAT such other orders as this Honourable Court shall grant in the circumstances deemed fit to grant in the interest of justice.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Virginia Nduta Kimiti sworn on even date.

THE APPLICANT'S CASE

3. The deponent averred that the suit property was registered on 14th March 2007 in the name of Ruth Wanjiru as a tenant for life and trustee for her children. She further averred that, in view of Ruth Wanjiru's death, the trust is now inconsequential and obsolete. Following Ruth Wanjiru's death, the beneficiaries agreed to have the suit property registered in her name.

4. She averred that the Estate of Geoffrey Thige Njuguna, a deceased beneficiary, is represented by his daughter Lucy Nyokabi Nyota, who has also signed the consent. She further stated that Lucy Waithira Njuguna, a deceased beneficiary, left behind a daughter, Judy Nyathira Kinyanjui, while Patrick Ndungu Njuguna, a deceased beneficiary, died without any children.

5. She urged the court to terminate the trust bestowed on Ruth Wanjiru and have the property transferred in her name.
6. In conclusion, she urged the court to allow the application as prayed.

THE RESPONDENTS' CASE

7. The Respondent filed a replying affidavit sworn by Wanderi M. Muigai dated 21st January 2025 in opposition to the application. The deponent averred that the application is defective because granting the orders does not comply with the trust.
8. The deponent argued that once a trust is terminated, the registrable interests automatically devolve to the beneficiaries named in the trust.
9. It was argued that the 1st Applicant is a stranger to the registered trust of the suit property. It was also argued that the Applicants are not only seeking to terminate the trust but also to transfer it to the 1st Applicant, who is not a beneficiary of the trust.
10. In conclusion, the deponent urged the court to dismiss the application with costs.

THE RESPONSE

11. The Applicant filed a further affidavit dated 2nd May 2025 in response to the replying affidavit. She reiterated the contents in her affidavit and added that the Attorney General consented to a similar application in Misc E181 of 2024. She argued that the beneficiaries are free to make any disposition they wish.
12. The application was canvassed by way of written submissions.

THE APPLICANTS' SUBMISSIONS

13. The Applicants filed their submissions dated 2nd May 2025.
14. On behalf of the Applicants, Counsel argued that the only issue for determination is whether the beneficiaries of the trust can transfer their interest in the suit property to someone outside the trust, with their consent.
15. Counsel submitted that it was not in dispute that there was no trust deed regarding the trust herein and, therefore, nothing restricts the Applicants from transferring their interest to anyone not mentioned in the trust. It was argued that the 2nd to 7th Applicants had consented to transfer their interest to the 1st Applicant, who is their relative.

16. It was further stated that the Trust Act does not prohibit the Applicants from transferring their interest. Counsel contended that the Applicants sued the Land Registrar because he refused to allow them to transfer the suit property unless there was a court order. Counsel relied on Section 56 of the Trustee Act, Sections 1A, 1B, and 3A of the Civil Procedure Act. Counsel argued that the Respondent in Milimani Miscellaneous Application No. 181 of 2025 conceded to the transfer of a beneficial interest of the 2nd Applicant via a consent.

THE RESPONDENT'S SUBMISSIONS

17. The Respondent filed its submissions dated 13th June 2025.

18. On behalf of the Respondent, Learned State Counsel outlined the following issues for the court's determination:

a) *Whether the property upon termination of the trust can be registered absolutely in the name of the 1st Applicant?*

b) *Who should bear the costs of the application?*

19. On the first issue, Learned State Counsel submitted that it was not in dispute that the property is registered in the name of Ruth Wanjiru as a tenant for life and trustee for her children. It is also undisputed that the trust has been terminated.

Counsel submitted that the Applicants prayer cannot be granted because it does not comply with the trust. It was submitted that once a trust is terminated, the registrable interests devolve to the beneficiaries named in the trust. It was further submitted that the 1st Applicant is a stranger to the trust with respect to the suit property. To support this claim, reliance was placed on the case of In the matter of the **Estate of Salome Mukami Kariuki (Deceased) (2016) eKLR**

20. Regarding the second issue, Counsel urged the court to dismiss the application with costs to the Respondent.

ANALYSIS AND DETERMINATION

21. Having considered the application, the respective affidavits, and the submissions by the parties, the only issue for determination is whether the Applicants are entitled to the orders sought. It is not in dispute that the suit property is registered in Ruth Wanjiru's name as a life tenant and trustee for her children. After her death, the trust she held was automatically dissolved, and the registrable interest effectively passed to the beneficiaries named in the trust.

22. The Respondent contended that the authenticity of the names specified in the consent form are questionable, as they do not correspond with those listed in the title document.
23. I have carefully read the supporting affidavit of the 1st Applicant, which states that the Estate of Geoffrey Thige Njuguna is represented by Lucy Nyokabi Nyota, while the estate of Patrick Ndungu Njuguna, a deceased beneficiary, is not represented because he died without children.
24. Regarding authenticity, the Applicant produced an authority to sue and consent for the registration of the suit property in her name. The 1st Applicant did not provide copies of identity cards to verify that the names and ID numbers on the consent actually belong to the beneficiaries. Similarly the Applicant did not adduce any evidence to show that Lucy Nyokabi and Lucy Waithira are the legal representatives of the estate of Geoffrey Njuguna Thige and Lucy Njuguna.
25. In the end, I find that the Applicant has not proved her case on a balance of probabilities as required.

26. The upshot of the foregoing is that the Originating Summons, 5th August 2025, is devoid of merit and the same is hereby dismissed with no orders as to costs.

**RULING DATED, SIGNED, AND DELIVERED VIA
MICROSOFT TEAMS THIS 21ST DAY OF NOVEMBER, 2025.**

.....

T. MURIGI

JUDGE

IN THE PRESENCE OF:-

John Mwariri for the Applicants

Ms Kubai for the Respondent

Ahmed- Court assistant