



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC MISC APPLICATION NO. E180 OF 2024

MARGARET WANGARI KINYANJUI.....1ST

APPLICANT

LUCY NYOKABI NYOTA.....2ND

APPLICANT

GRACE NDUTA NJUGUNA.....3RD

APPLICANT

JOYCE NGORI NJUGUNA alias JOYCE NJOKI MUNGAI.....4TH

APPLICANT

JUDY NYATHIRA KINYANJUI.....5TH

APPLICANT

GILBERT MWAURA NJUGUNA.....6TH

APPLICANT

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

APPLICANT

=VERSUS=

**CHIEF LAND REGISTRAR NAIROBI sued Through
THE ATTORNEY GENERAL.....
RESPONDENT**

JUDGMENT

1. By an Originating Summons dated 5th August 2024 brought under Order 31 Rule 1 and 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, 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.48 held in common by the 2nd to 7th Applicants herein be registered absolutely in the name of Margaret Wangari Kinyanjui.

c) THAT the Respondent be ordered to facilitate the transfer and registration of that parcel of land

DAGORETTI/MUTUINI/T.48 in favour of Margaret Wangari Kinyanjui.

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 Margaret Wanjiru Kinyanjui 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 2nd to 7th Applicants, who are the beneficiaries of the trust, 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 who had also signed the consent. She also stated that Lucy Waithira Njuguna a deceased beneficiary died leaving

behind her daughter Judy Nyathira Kinyanjui while Patrick Ndungu Njuguna a deceased beneficiary died without leaving any children. She also stated that there was a typographical error in the name of Joyce Ngoiri Njuguna, which was written as Ngoiri instead of Njoki, and clarified that Mungai was her married name. She also mentioned that Julietta Njuguna adopted her married name and is now known as Julietta Njeri Kilonzo. In conclusion, she urged the court to allow the application as prayed.

THE RESPONDENTS' CASE

5. The Respondent filed a replying affidavit sworn by Wanderi M. Muigai dated 21st January 2025 in opposition to the application. The deponent argued that the application is defective because granting the orders does not comply with the trust.
6. The deponent argued that once a trust is terminated, the registrable interests automatically devolve to the beneficiaries named in the trust.
7. 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 the property to the 1st Applicant, who is not a beneficiary thereof.

8. In conclusion, the deponent urged the court to dismiss the application with costs.

THE RESPONSE

9. The Applicant filed a further affidavit dated 2nd May 2025 in response to the replying affidavit. She reiterated the contents of 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.

10. The application was canvassed by way of written submissions.

THE APPLICANTS SUBMISSIONS

11. The Applicants filed their submissions dated 2nd May 2025.

12. On their behalf, Counsel submitted that the only issue for determination is whether the beneficiaries can transfer their interest in the suit property to a person not listed in the trust. Counsel submitted that while the Trustee Act and the Trustee (Perpetual Succession) does not explicitly state that beneficiaries can transfer their interest, it does not prohibit

them from doing so. It was submitted that the beneficiaries are not restricted from transferring their interest to anyone since there is no trust document.

13. Counsel contended that the beneficiaries have consented to transfer the suit property to the 1st Applicant and have signed a consent to that effect.
14. Counsel relied on Section 1A, B and 3A to submit that the court has power to make orders that are necessary to meet the ends of justice. The Applicants filed their submissions dated 2nd May 2025.
15. 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.
16. 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.

17. 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

18. The Respondent filed its submissions dated 13TH June 2025.
19. 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?*
20. Regarding the first issue, Learned State Counsel argued that it is not disputed that the property is registered in the name of Ruth Wanjiru as a tenant for life and trustee for her children. It

is also not disputed that the trust was terminated after her death.

21. Learned state Counsel argued that the orders sought by the Applicants cannot be granted because once a trust is terminated, the registrable interests devolve to the registered beneficiaries specified in the trust.
22. It was argued that the 1st Applicant is a stranger to the trust because she does not appear on the list of beneficiaries. It was further argued that the names listed in the consent do not match the names of the beneficiaries on the title. Additionally, concerns were raised about the inability to verify the authenticity of the signatures.

ANALYSIS AND DETERMINATION

23. Having considered the application, the respective affidavits, and the submissions by the Applicant, the only issue for determination is whether the Applicants are entitled to the orders sought.
24. 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.

25. 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.

26. 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.

27. 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.

28. In the end, I find that the Applicant has not proved her case on a balance of probabilities as required.

29. The upshot of the foregoing is that the Originating Summons, dated 5th August 2024, 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.

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**T. MURIGI
JUDGE**

IN THE PRESENCE OF:-

John Mwariri for the Applicant

Ms Kubai for the Respondent

Ahmed – Court assistant