



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELCL MISC. APPLICATION NO. E009 OF 2023

**JAYNE GATHONI MWICIGI.....1ST
APPLICANT**

**ROSE NJERI KIHARA.....2ND
APPLICANT**

***(Both suing as legal representatives of the Estate of JANE
GATHONI***

WANG'ANG'A Alias GATHONI WANG'ANG'A)

VERSUS

**CHAIRMAN KABETE LAND BOARD.....1ST
RESPONDENT**

**LAND REGISTRAR, KIAMBU.....2ND
RESPONDENT**

AND

**JEMIMA NINI KIHARA.....INTERESTED
PARTY**

JUDGMENT

- 1) The Applicants Jane Gathoni Mwicigi and Rose Njeri Kihara filed an Amended Originating Summons dated 28/08/2024 under Order 31 (Rule 1, 2) 37 Rule (1, 2, 3) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act

(Cap 21) Sections 17, 18, 56 & 57 of the Trustees Act and all other enabling laws seeking the following orders:

1. THAT the trust bestowed on the Interested Party be terminated and have the property **KABETE/KANYARIRI/3762** jointly owned with the 1st and 2nd Applicants as beneficiaries.
 2. THAT the 1st Respondent herein be ordered to sign Land Board Consents for sub-division, transfer, charge or any other dealings on all that parcel of land **KABETE/KANYARIRI/3762** on behalf of the 1st and 2nd Applicants and the Interested Party herein.
 3. THAT the 2nd Respondent be directed to effect the sub-division, transfer or any other dealings on all that parcel No. **KABETE/KANYARIRI/3762** in favour of the 1st and 2nd Applicants and the Interested Party.
 4. THAT such other orders as this Honorable Court shall in the circumstances deem fit to grant in the interest of justice.
 5. THAT cost of this application be in the suit.
- 2) The grounds upon which the application is predicated are set out on the face of the application and on the Affidavit in support sworn on even date by the 1st and 2nd Applicants. The Applicants state that they were appointed as the Administrator and Beneficiaries of the Estate of Jane Gathoni Wang'ang'a vide Certificate of Confirmation of Grant on 14/10/2022. That the Interested Party was issued with the Title Number **KABETE/KANYARIRI/3762** that had been

converted from the original mother title **MUGUGA/KANYARIRI/152** to hold in trust for the Beneficiaries of the Estate of Jane Gathoni Wang'ang'a on 13/02/2023.

- 3) They depose that the 1st and 2nd Applicants as administrator and beneficiaries of the estate appointed the Interested Party herein Jemima Nini Kihara to hold in trust the interest of the land for them and who are both adults and have agreed to develop the parcel of land namely **KABETE/KANYARIRI/3762** and have the proceeds divided among themselves at individual level for personal economic emancipation.
- 4) It is their case that the Chairman Kabete Land Board signs the Land Board Consent for transfer, charge, sub-division in favour of the 1st and 2nd Applicants and the Interested Party herein and further Land Registrar Kiambu to effect and execute transfer/charge and subdivision instruments.
- 5) At the same time the 1st and 2nd Applicants wish to have the Interested Party terminate the trust entrusted to her and have the beneficiaries equally own the land to enable them obtain consent to subdivide and develop the property certain assets had been placed under the charge of the administrators to hold in trust for certain beneficiaries. The said beneficiaries are now of age and would like the property to vest in them rather than being held in trust.
- 6) They also note that the Interested Party is in her advanced stage in life and wishes to have the trust entrusted to her

terminated and then the 1st and 2nd Applicants to have the property shared in equal shares as per the mode of distribution shown on the Amended Certificate of Confirmation of Grant annexed as **'JJG3'** and the Consent signed by the 1st and 2nd Applicants annexed as **'JJG4'**.

7) At the same time the 1st and 2nd Applicants and the Interested Party have no objection to the termination of trust in the said parcel and they have annexed as **'JJG5'** copies of individual sworn Affidavits.

8) As stated, both Applicants and the Interested Party have sworn Affidavits in support of the application, copies of the title and official Search of the title have been attached to the application marked as **'JJG1'** & **'JJG2'**. The 1st and 2nd Applicants are sisters and the Interested Party is their mother and the deceased Jane Gathoni Wang'ang'a is their mother in-law.

9) The Application is not opposed. The Applicants filed written submissions dated 3/09/2024 and reiterated what they had already stated in the pleadings. The Applicants relied on Section 56 of the Trustee Act and the case of **Re: Eunice Wanjeri Njenga 2013**.

Issue for Determination

10) The only issue that I need to determine is whether the Applicants are deserving of the reliefs sought in the Originating Summons application.

Analysis and Determination

- 11) Beneficiaries can apply to terminate a trust and receive the assets with joint ownership if they meet specific legal conditions, primarily known as the **rule in Saunders v Vautier (1841) 4 Beav 115**, (named for the case where the principle was developed). In the above-referenced case the Court held that a beneficiary who is fully entitled to a trust has the right to direct the Trustee to transfer the trust property to them or to terminate the trust. Provided that all beneficiaries are adults and have legal decision making-capacity, they can seek to have the trust terminated before the vesting date, and all trust property distributed.
- 12) To invoke the **Saunders v Vautier rule** and end a trust, the following conditions must be met:
- a) **All beneficiaries must be in agreement:** All beneficiaries must agree to terminate the trust. If there is any disagreement among the beneficiaries, the trust cannot be terminated.
 - b) **Beneficiaries must be of full age and legal capacity:** All beneficiaries must be adults and mentally capable of making the decision to terminate the trust. If any beneficiary is a minor or lacks legal capacity, the trust cannot be terminated.
 - c) **Beneficiaries must be absolutely entitled to the trust property:** The beneficiaries must have an absolute, not contingent, entitlement to the trust property. If the entitlement to the trust property is

contingent on a future event, the trust cannot be terminated.

13) I have read and considered the attached affidavits, and the supporting documents and observe as follows;

a) The **KABETE/KANYARIRI/3762** is registered in the names of **Jemimah Nini Kihara** ID No. 5192917 and she is the Trustee and Interested Party in the instant suit;

b) The Trust document creating the trust has been annexed as **'JJG3'** showing the nature of the trust envisaged as well as the proportionate holding of each Trustee in the trust asset;

c) The official Search dated 7/07/2023 clearly indicated in the proprietorship section that Jemimah Nini Kihara is holding in trust for herself and other beneficiaries of James Kihara Mwangi's Family namely Jane Gathoni Mwicigi and Rose Njeri Kihara equally and this is annexure **'JJG-1'** - Title Deed issued.

d) The certified photostat copy of the Title Deed was annexed to the application to enable the Court appreciate the transactions on the title and the Proprietorship section indicate that the title **KABETE/KANYARIRI/3762** - 0.078 Ha for Registry Map Sheet No. 4 & Township Subdivision 152 was issued to Jemima Nini Kihara (To hold in trust for herself and other beneficiaries of James Kihara Mwangi's Family namely - Jane Gathoni Mwicigi and Rose Njeri

Kihara in equal shares). It indicates that title was issued on 13.02.2023.

14) Section 45 of the Trustees Act Cap 167 states as follows;

“In any of the following cases - (g) where land or any interest therein is vested in a trustee, whether by way of mortgage or otherwise and it appears to the Court to be expedient, the Court may make an Order (in this Act called a vesting Order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct.”

15) The Applicants have come to this Court seeking to terminate the trust and have a vesting Order of the suit property into their names in equal portions as was apportioned to them in the Trust by Jane Gathoni Wang'ang'a (Deceased). The entry on the title is very clear on the sharing of the land equally between the two Applicants.

16) Given the clarity in the trust document directing how the suit property should be vested and in what proportions, this Court is obligated to issue orders to operationalize the trust as provided and not be seen to want to create another trust for the Applicants.

17) Whereas the Applicants did not file any agreement apportioning the suit property, the trust document is very clear. I also note that this application is non-contentious.

18) In the end I hold and find that the Amended Originating Summons Application dated 28/08/2024 is merited and I make the following disposal orders:

i) The trust bestowed on the Interested Party is hereby terminated and the property KABETE/KANYARIRI/3762 should now be jointly owned with the 1st and 2nd Applicants as beneficiaries.

ii) The 1st Respondent herein is ordered to sign Land Board Consents for sub-division, transfer, charge or any other dealings on all that parcel of land KABETE/KANYARIRI/3762 on behalf of the 1st and 2nd Applicants and the Interested Party herein.

iii) The 2nd Respondent is directed to effect the sub-division, transfer or any other dealings on all that parcel KABETE/KANYARIRI/3762 in favour of the 1st and 2nd Applicants and the Interested Party and the cost of the transactions to be borne by the Applicants and the Interested Party.

iv) I make no Orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS
1ST DAY OF DECEMBER, 2025 VIA MICROSOFT TEAMS.**

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**MOGENI J
JUDGE**

In the presence of:

Mr. Wang'ang'a for the 1st and 2nd Applicants
1st and 2nd Respondents - Absent
Mr. Wang'ang'a for the Interested Party
Mr. Melita - Court Assistant

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**MOGENI J
JUDGE**

ORIGINAL