



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**THIKA LAW COURTS**  
**MISCELLANEOUS APPLICATION NO. E009 OF 2025**  
**IN THE MATTER OF LAND PARCEL NGUIRUBI/NDIUNI/1XXX1**  
**IN THE MATTER OF APPLICATION BY HJN & RWG AS**  
**TRUSTEES OF**  
**JKG - MINOR**  
**RULING**

1. What is before this Court for determination is an Originating Summons dated 21/03/2025 expressed to be brought under Article 53 (2) of the Kenyan Constitution, Section 8(1) (a) of the Children's Act Cap 141 Order 37 Rules 1, 2, 12, 13, 14 & 16 of the Civil Procedure Rules, Sections 12 (1), 17, 33 (1) (a), 34, 45 (g) 49 (a) 54 (c), 57 (1) & 59 of the Trustee Act (Cap 167) Laws of Kenya Sections 1A, 1B, & 3A Civil Procedure Act seeking the following:

- 1) **THAT HKN** of National Identity Number 1XXXX7 and **RWG** of National Identity 2XXXXXX4 be appointed Guardians ad Litem for the purpose of the instant suit.
- 2) **THAT** the Honorable Court be pleased to authorize the sale of the parcel of land known as title number **NGUIRUBI/NDIUNI/XXX** hereinafter referred to as

**“the suit property”** and the proceeds realized from the sale of the same be applied in the settlement of the following:

- a) The costs of the incidental to the valuation of the said property;
- b) The costs of and incidental to the transfer of the suit property;
- c) The payment of school fees for the minor in this suit at **St. XXXX Academy;** and
- d) The investment of the balance of the sale in a call account for purpose of future application for the education of the minor.

3. THAT the Honorable Court be pleased to lift the restriction placed in the suit property to enable the transfer of the suit property to the prospective buyer.

4. THAT the Honorable Court be pleased to issue directions on the service of the Originating Summons Application herein.

5. THAT the cost of and incidental to this application be provided for.

2. The Application is premised on the grounds that the Chief Magistrate’s Court in **Succession Cause No. E3888 of 2022** issued a Certificate of Confirmation of Grant in which the Applicants were appointed as Trustees of the minors BNK and JKG as per annexure ‘**HKN-4**’. BNK has since obtained

the age of majority as evidenced by annexure **HKN-** but JKG is still a minor.

3. That the purpose for which the property was transferred to the Applicant and her sister RWG to hold in trust for the minors has now materialized and it is the best interest of the children that the Court does authorize the sale of the property.
4. BNK and JKG are both daughter and son of the Applicant who are attending College at Nairobi Women's Hospital College and St Lilian Academy respectively as evidenced by annexure '**HKN-6z**'.
5. The Applicant deposes to have been constrained to raise funds to cater for the minor's and her daughter's education being a widow and sole bread winner for the two and she is also unemployed. That is why she has filed the application to be allowed to sell parcel Number NGUIRUBI/NDIUNI/1XXX1 so that she can pay school fees for the children and other incidental needs for the children.
6. Further she deposes that the children are adequately and sufficiently provided for in terms of the assets that she and her sister continue to hold in their trust as per the Certificate of Confirmation of Grant dated 19/07/2023 which is annexure '**HKN-3**' hereinabove.
7. The Applicant brought the Application under Certificate of Urgency and filed submissions dated 16/05/2025 content of which I have considered. The one issue though that arises

from the Application is whether this Court has jurisdiction to give consent to, or allow the Applicant to sell the suit land which shows that she is holding in trust for the minors. The Applicant relied on Article 53 (2) of the Kenyan Constitution, Section 8(1) (a) of the Children's Act Cap 141 Order 37 Rules 1, 2, 12, 13, 14 & 16 of the Civil Procedure Rules, Sections 12 (1), 17, 33 (1) (a), 34, 45 (g) 49 (a) 54 (c), 57 (1) & 59 of the Trustee Act (Cap 167) Laws of Kenya Sections 1A, 1B, & 3A Civil Procedure Act.

8. This Court has looked at the Application and the Affidavit in support as well as the attachments therein and notes that the suit property is indeed a trust property and the beneficiaries are minors.
9. Order 37 Rules 19 of the Civil Procedure Rules makes provisions on the manner in which a Trustee may approach Court on issues pertaining administration of trust property. It states:

***“Where, on an Originating Summons under this order, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause had been begun by filing a Complaint, it may order the proceedings to continue as if the cause had so begun and may, in particular, order that any Affidavits filed shall stand as pleadings, with or***

***without liberty to any of the parties to add to, or to apply for particulars of those Affidavits.”***

10. The Application before the Court was brought as an Originating Summons which is the instrument that Trustees are authorized to use to seek an order from Court to deal with the trust where the power was not given within the instrument.
11. The power to this Court granting prayers sought are donated by Section 56 of the Trustees Act which gives the Court the authority to rescind such an order as and when need arises. It is trite that a Trustee can neither interfere with the property of a beneficiary nor do such an act that will jeopardize the rights of the Trustees.
12. The Applicant wishes to sell the suit property so as to pay for the children's education and other incidentals to the children's rights. The Applicant deposes that this is in the best interest of the children. One of the minors BNK has attained majority age and has filed an Affidavit and attached a copy of her Identification Card where she avers that she has no objection to the Applicant selling the suit property.
13. The second Trustee RWG who is deposed as the sister to the Applicant also filed a sworn Affidavit dated 21/03/2025 where she stated that the Applicant is constrained to raise funds to cater for the minor's and daughter's education due to her limited resources. In essence she has asked the Court to allow the Applicant to sell the land in order to pay the fees

for the children and to cater for other incidental needs of the children.

14. Section 17 of the Trustee Act gives power to a Trustee to do that act to raise money including calling in all or any part of the trust property.

15. Where Trustees are authorized by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in or mortgage of all or any part of the trust property for the time being in possession.

16. Further, Section 56(1) and (3) of the Trustee Act, Cap 167 Laws of Kenya provides:-

***“(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) ....***

***(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."***

17. From the Application I note that the Applicant avers that she is a widow and she is not employed and is a person of meagre resources. She attached the Death Certificate of her late husband annexure 'HKN-1' and Birth Certificates of the children as annexure 'HKN-2', to support her claim of being widowed and having children to take care of.

18. She did not attach any document that would attest to her meagre income but since she has sworn an Affidavit this will suffice. Section 13 of the Trustees Act provides as follows:-

***"(1) Where a trust for sale or a power of sale of property is vested in a Trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to***

**any such conditions respecting title or evidence of titles or other matter as the Trustees think fit, with power to vary any contract for sale, and to buy in at any contract for sale and to resell, without being answerable for any loss.**

**(2)A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof.”**

19. Arising from the foregoing, it is my finding that the Applicant has properly invoked the jurisdiction of this Court under Order 37 Rule 1 of the Civil Procedure Act and Section 56 of the Trustees Act. It is also my finding that the purposes for which the proceeds of the sale are intended are in the best interest of the minors as the same are meant to enable the minors to further their education and also to meet other incidentals for them.

20. Given the circumstances, I hereby allow the Originating Summons dated 21/03/2025 and accordingly make the following orders:

**a) Leave and authority is hereby granted to the Applicant and the joint Trustee HKN and RWG to sell the parcel of land known as title number NGUIRUBI/NDIUNI/1XXX1 hereinafter referred to as “the suit property” and the proceeds realized from the sale of the same be applied in the following manner:**

- i. The costs of the incidental to the valuation of the said property;***
- ii. The costs of and incidental to the transfer of the suit property;***
- iii. The payment of school fees for the minor in this suit at St. XXX Academy; and***
- iv. The investment of the balance of the sale in a call account held jointly by the joint Trustees for purpose of future application for the education of the minor;***
- v. The costs of the Application shall be in the cause.***

21.Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 10<sup>TH</sup> DAY OF DECEMBER, 2025 VIA MICROSOFT TEAMS.**

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**MOGENI J  
JUDGE**

**In the presence of:**

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Mr. Melita - Court Assistant

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**MOGENI J  
JUDGE**