



REPUBLIC OF KENYA



**In re AWM (Environment and Land Miscellaneous Application
E096 of 2025) [2025] KEELC 8557 (KLR) (9 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8557 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E096 OF 2025**

JA MOGENI, J

DECEMBER 9, 2025

**IN THE MATTER OF PROPERTY KNOWN AS RUIRU EAST/JUJA
EAST BLOCK X/XXXXX HELD IN TRUST FOR A MINOR**

AND

**IN THE MATTER OF THE TRUSTEES ACT (CAP 167, LAWS OF
KENYA)**

AND

**IN THE MATTER OF THE CIVIL PROCEDURE ACT (CAP 21,
LAWS OF KENYA) AND ORDER 37 RULE 1, 8, 9 AND 10 OF
THE CIVIL PROCEDURE RULES, 2010**

AND

**IN THE MATTER OF APPLICATION BY AWM AS TRUSTEE FOR
CONSENT OF COURT TO ALLOW HER TO SELL THE
PROPERTY FOR PURPOSES OF UTILISING THE PROCEEDS
FOR THE BENEFIT OF THE MINOR**

RULING

1. By Chamber Summons dated 7/10/2025 in terms of Sections 56 & 57 of the Trustees Act; Section 3A of the *Civil Procedure Act* and Order 37 Rules 1, 8, 9 and 10 of the Civil Procedure Rules the Applicant seeks the following:-

1. Spent.



2. That this Honorable Court be pleased to grant leave to the Applicant AWM, to sell the property known as Ruiru East/Juja East Block X/2xxx2, currently registered in the name of her minor son ENM which the Applicant holds in trust for the said minor.
 3. That this Honorable Court be pleased to issue a vesting order authorizing the Land Registrar, Ruiru Lands Registry, to effect the transfer and registration of the said parcel Ruiru East/Juja East Block X/2xxx2 in favor of the prospective purchaser JMN, upon completion of the sale.
 4. That the net proceeds of the sale be applied by the Applicant strictly towards the upkeep, education and general welfare of the said minor and other dependents under her care, and the Applicant be directed to file an account of the utilization of the said proceeds within ninety days of completion.
 5. That this Honorable Court do make such further or other orders as it may deem fit in the circumstances and in the best interests of the minor.
2. The Application is premised on the grounds that the Applicant is the biological mother and the legal guardian of the minor ENM and she holds the parcel of land Ruiru East/Juja East Block X/2xxx2 in trust for him pursuant to the Confirmed Grant in Succession Cause No. E1XX of 2021.
 3. That the Applicant is the widow of SMW and is the sole breadwinner and care giver of her three biological children and two orphaned nieces under her custody. The Applicant is experiencing severe financial distress and is unable to meet even the most basic needs, including food, school fees and medical expenses.
 4. That the minor is a student at a school in Kahawa West where school fees amounting to Kesh 49,200 per term remain unpaid. Two of the Applicant's other sons, EWM and ENM are pursuing tertiary education with substantial unpaid tuition arrears. The Applicant has identified a buyer.
 5. The sale will not prejudice the minor as he still retains ownership of two other properties; Ruiru/Ruiru West Block X/2xx9 and Uiguano Wa Kirere Cooperative Society Juja Plot Certificate No. 4XX. That it is in the interest of the child that the Court grants the orders sought.
 6. The Application is supported by the Supporting Affidavit of AWM sworn on even date. She deposes to be the widow of the late SMW and biological and legal guardian of ENM, as per the annexed copy of the Birth Certificate marked as 'AMW-1'. She annexed several documents to support her claim including the Confirmation of Grant marked as 'AWM 2' and Title Deed marked as 'AWM-3'.
 7. A copy of the Death Certificate for the late SMW is also annexed and marked as 'AWM-4' and the document showing the fees arrears from school marked as 'AWM-5' and those of the children in tertiary institutions marked as 'AWM – 6 (a) – 6 (c)'.
 8. M deposed that she is the biological mother of the minors and that she purchased the suit property which is registered in her name and put in a trust on behalf of the minors.
 9. The Applicant brought the Application under Certificate of Urgency and filed submissions dated 3/11/2025 and she submitted that this Court has jurisdiction to grant the prayers sought. 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 minor. The Applicant relied on the Sections she quoted on the Chamber Summons and identified the following as the issues for determination:



- i. Whether this Court has jurisdiction to grant a vesting order and related relief under the Trustees Act and Civil Procedure Rules.
 - ii. Whether the Applicant has demonstrated sufficient cause and good faith to justify the sale of the trust property.
 - iii. Whether the proposed sale and vesting order are in the best interests of the minor within the meaning of Article 53(2) of the Constitution and Section 4(2) of the Children Act, 2022.
10. In my reading of the instant application, I find it is a non-contentious matter and only requires of the Court, in my summation, to answer the following questions:
- i. Whether a vesting order should issue for the Applicant;
 - ii. Whether this Court should approve the sale of the suit property and the proceeds realized thereon applied strictly towards the upkeep, education and general welfare of the said minor and other dependents under the Applicant's care; and
 - iii. Whether the Applicant be directed to file an account of the utilization of the said proceeds within ninety days of completion.
11. The Constitution of Kenya under Article 53(2) and Section 4(1) (2) of the Children's Act enjoins the Court to consider the best interests of the child as a factor in decisions affecting minors. This shall be the guiding principle upon which I shall base my determinations herein.
12. Order 37 Rule 1 of the Civil Procedure Rules, 2010 provides as follows:
- " 1. The executors or administrators of a deceased person, or any of them, and the trustees under any deed or instrument, or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, heir, or legal representative of a deceased person, or as cestui que trust under the terms of any deed or instrument, or as claiming by assignment, or otherwise, under any such creditor or other person as aforesaid, may take out as of course, an originating summons, returnable before a judge sitting in chambers for such relief of the nature or kind following, as may by the summons be specified, and as circumstances of the case may require, that is to say, the determination, without the administration of the estate or trust, of any of the following questions.
 - a. any question affecting the rights or interest of the person claiming to be creditor, devisee, legatee, heir or cestui que trust;
 - b. the ascertainment of any class of creditors, devisees, legatees, heirs, or others;
 - c. the furnishing of any particular accounts by the executors, administrators or trustees, and the vouching, when necessary, of such accounts;
 - d. the payment into Court of any money in the hands of the executors, administrators or trustees;



- e. directing the executors, administrators or trustees to do, or abstain from doing, any particular act in their character as executors, administrators or trustees;
- f. the approval of a sale, purchase, compromise or other transaction;
- g. the determination of any question arising directly out of the administration of the estate or trust.”

13. The power to sell trust property is conferred upon an Applicant as a Trustee by Section 13 of the Trustee Act which 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 title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind 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.”

14. I note though that 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.

15. The Applicant seeks that she be allowed to sell the Suit Property for the reason that it has become necessary to do so to cater for the upkeep and education of the minor and other minors under her care as enumerated in the grounds of the application and the Supporting Affidavit. The precise reason for which the suit property was entrusted to the minor.

16. Section 17 (1) of the Trustee Act allows Trustees to raise the money required to pay or apply capital money subject to the trust by the sale, conversion, calling in or mortgage of all or any part of the trust property for the time being in possession. In my view, and pursuant to the powers accorded to this Court by virtue of Section 56 of the Trustee Act, the Applicant has satisfactorily explained the need to sell the property. She has demonstrated ownership of the suit property by the minor in trust of his deceased father. She has shown, and has further been confirmed as a Trustee on behalf of the minor vide the Succession Cause No. E122 OF 2021 at Ruiru Law Courts. She has also confirmed that the funds realized by the sale of the suit property are to be used for the upbringing and education of the minor and others under her upkeep.

17. In Re Eunice Wanjeri Njenga ELC Miscellaneous Civil Suit 62 of 2013 [2013] eKLR it was stated:

“In summary the general duties of trustees in relation to the trust property are to safeguard the assets of the trust, to invest any trust money in his or her hands, and to distribute the assets to the beneficiaries and satisfy any claims of the beneficiaries. With relation to the beneficiaries, trustees are under a duty to maintain equality between beneficiaries and to provide accounts and information to the beneficiaries. Section 56 of the Trustees Act cited in the foregoing



also gives this Court power to authorize specific investments upon application by a trustee, and together with section 59 permits this Court to order that costs of a sale and application to the Court be met from the proceeds of sale of a trust property.

The Applicant has averred that she intends to use the proceeds of the sale to invest in the remaining portion of the trust property, to pay for the beneficiaries' school fees and to buy a larger portion of land. Section 4(1) of the Trustees Act allows a trustee to invest any trust funds in the purchase of immovable property in Kenya and provides for certain conditions as to the tenure of the land to be purchased.

It is my view that the proposed investments by the Applicant are prudent and in the interests of the beneficiaries. I have also noted that Applicant has duly informed the beneficiaries of the same, who have no objection. I therefore see no reason why the approval and orders sought by the Applicant should not be granted by the Court, subject to such conditions as may be necessary.”

18. On the issue at hand, the Court in *In the Matter of GW & Another (Minors)* [2016] eKLR had this to say:

“The power to sell trust property is conferred upon the Applicants as trustees by Section 13 and of the *Trustee Act*. Section 13 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 title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind 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 Rules 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 minor as the same are meant to enable the minor to further his education and for upkeep.

20. Based on the foregoing, I find that it is in the best interests of the minor herein that the Applicant's Chamber Summons dated 7/10/2025 is allowed in the following terms:

- a. That the Applicant AWM, is granted leave to sell the property known as Ruiru East/Juja East Block X/2xxx2, currently registered in the name of her minor son ENM which the Applicant holds in trust for the said minor.
- b. That Court hereby issues a vesting order authorizing the Land Registrar, Ruiru Lands Registry, to effect the transfer and registration of the said parcel Ruiru East/Juja East Block X/2xxx2 in favor of the prospective purchaser JMN, upon completion of the sale.
- c. That the net proceeds of the sale be applied by the Applicant strictly towards the upkeep, education and general welfare of the said minor and other dependents under her care, and the Applicant is directed to file an account of the utilization of the said proceeds within ninety days of completion of the sale before this Court.



- d. That the Applicant shall, with leave of this Court, apply the balance of the sale proceeds thereof to any authorized investment within the meaning of the Trustee Act for the benefit of the minor and others under the Applicant's care for the minor's future education and upkeep.
- e. That the costs of and incidental to the transfer and the costs of and incidental to this application be realized from the proceeds of the sale thereof.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 9TH DAY OF DECEMBER, 2025 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

Mr. Kinyanjui for the Plaintiff/Applicant

Mr. Melita – Court Assistant

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MOGENI J

JUDGE

