



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ORIGINATING SUMMONS NO. ELCL (OS) E063 OF 2025

IN THE MATTER OF THE TRUSTS OF THE WILL OF SAUDIN MANDAN
AND
IN THE MATTER OF SECTIONS 17, 18, 56 AND 57 OF THE TRUSTEES ACT
AND
IN THE MATTER OF AN APPLICATION FOR SALE OF A PARCEL OF LAND
LAND REFERENCE NO. 209/2597 — GRANT NO. L.R. 78638 SITUATE IN
NAIROBI

SERVICES **AND** **SYSTEMS**
LIMITED **APPLICANT**

-VERSUS-

ESTATE OF THE LATE SAUDIN MANDAN.....
RESPONDENT

RULING

1. The Originating Summons now before this Court for determination is dated 30th September 2025, and is brought by the Applicant ex parte pursuant to **Order 37 Rule 1(f) & (g), and Rule 14 of the Civil Procedure Rules, 2010**, as well as **Sections 4, 17, 18, 56 and 57 of the Trustees Act, Cap. 167**.
2. The Applicant, Services and Systems Limited, appears in these proceedings in its capacity as the lawfully appointed trustee of the estate of the late Saudin Mandan, and is the entity in whose name the trust property is presently registered. The property in issue is the parcel of land formerly known as L.R. No. 209/2597, now designated as Nairobi/Block 28/72, Grant No. I.R. 78638 (hereinafter referred to as “the trust property”).

3. Through the Originating Summons, the Applicant seeks the approval and authorisation of this Court to dispose of the trust property, to re-invest the proceeds of sale in government tax-free bonds or other secure financial instruments, and to apply a portion of the proceeds towards beneficiary-related claims, the transactional costs of the sale, and the costs of the present application.
4. The application is supported by a Supporting Affidavit sworn on 30th September 2025 by Alkarim Hassanali Jiwa, the Chairperson and Director of the Applicant. In that affidavit, he avers that the Applicant has been the successor trustee through a documented chain of appointments spanning several decades
5. He further explains that, having evaluated the economic performance and utilisation of the trust property, the Applicant has determined that the continued retention of the property in its current form is no longer optimal, and that the proposed sale and reinvestment will enhance the long-term financial returns available for the fulfilment of the obligations set out in the Testator's Will.
6. The Applicant's counsel was directed to file written submissions, which were duly filed. In the said submissions, learned counsel provided a detailed background of the trust history, tracing the chain of trusteeship from the grant of probate issued on 3rd April 1937 in Cause No. 104 of 1936, through various Deeds of Appointment, culminating in the appointment of the Applicant as the current trustee of the estate of the late Saudin Mandan.
7. Counsel submitted that the trust property in issue is Nairobi/Block 28/72, formerly L.R. No. 209/2597 - Grant No. I.R. 78638, and that the Applicant, having evaluated the trust property for its highest and best use, formed the view that disposal of the trust property and reinvestment of the proceeds in secure government tax-free bonds would significantly increase the income

available for distribution to beneficiaries in accordance with the Testator's wishes. The Court was referred to annexures showing that the beneficiaries were notified of the proposal and none has raised any objection.

8. With respect to jurisdiction, counsel submitted that under **Section 13 of the Environment and Land Court Act**, this Court has the mandate to determine matters relating to the administration and management of land held in trust. The Applicant therefore submits to have properly approached this Court under **Order 37 Rule 1(f) & (g)** of the Civil Procedure Rules, which permits trustees to seek the Court's approval for the sale of trust property and the determination of questions arising directly from estate or trust administration.
9. On the substantive issue, counsel relied heavily on Section 56(1) of the Trustees Act, which empowers the Court to authorise a sale, investment, expenditure, or other transaction where such transaction is, in the Court's opinion, expedient, but cannot be effected because the trust instrument does not expressly confer such power. Counsel emphasised that the Will of the Testator does not expressly authorise a sale, making the present application both necessary and properly founded.
10. Counsel further submitted that Section 4 of the Trustee Act expressly empowers a trustee to invest trust funds in securities guaranteed by the Government of Kenya, and that Section 38 of the Trusts of Land Act, Cap. 290 authorises the reinvestment of capital monies arising from a trust for sale, including in financial instruments or properties in which trustees are permitted by law to invest.
11. On the application of proceeds and costs, counsel referred to Section 59 of the Trustee Act, which authorises the Court to direct that costs of applications relating to trust administration including sales and conveyancing

be raised and paid out of the trust property or its income. Counsel therefore submitted that the Court should permit the Applicant to apply a portion of the sale proceeds towards beneficiary claims, transactional costs, and the costs of this Originating Summons.

12. Counsel relied on two authorities in support of the application. First, **Re Eunice Wanjeri Njenga [2013] eKLR**, where the Court sanctioned the sale of trust property and reinvestment of proceeds after finding that the trustee had acted prudently, had consulted beneficiaries, and that the intended investment was in their best interest. Second, counsel cited **In the Matter of an Application by Ebrahimji Gulamhusein Anjarwala (1946) 22(1) EACA 3**.
13. Counsel submitted that, applying the principles from the above authorities, the Applicant had demonstrated prudence, compliance with fiduciary obligations, and beneficiary consultation, and therefore the orders sought should be granted.

Issues for Determination

14. I have carefully considered the pleadings filed and the submissions made by the Applicant. The issue for determination is whether this Court should approve the proposed sale of the trust property, permit the reinvestment of the proceeds in authorised financial instruments, and allow the application of part of those proceeds towards beneficiary claims, transaction costs, and the costs of this application.

Analysis and Determination

15. The application is properly made under Order 37 Rules 1(f) & (g) of the Civil Procedure Rules and the Court has jurisdiction under Section 13 of the Environment and Land Court Act to determine questions arising out of administration of land held on trust. Substantively, the powers relied on are

Sections 4, 17, 56 and 59 of the Trustees Act and Section 38 of the Trusts of Land Act, Cap. 290. Where a trust instrument is silent, **Section 56(1)** permits the Court, where it considers a transaction expedient, to confer necessary powers upon trustees on such terms and conditions as the Court thinks fit.

16. Section 4 authorises investment of trust funds in government-guaranteed securities and other specified investments. Section 38 governs the application of capital money arising from a trust for sale. **Section 59** allows this Court to direct that costs and expenses of applications and transfers may be raised and paid out of the trust property or income.
17. On the evidence the Applicant is the duly appointed trustee and the trust property is registered in its name. The Applicant depones that it has assessed the trust property, consulted beneficiaries and that no objection was raised. The Applicant proposes to sell and to reinvest the proceeds in government tax-free bonds or other instruments authorised under **Section 4**.
18. Where the trust instrument does not expressly permit sale, **Section 56(1)** authorises the Court to confer such power if it is expedient. The Applicant has advanced credible commercial reasons for sale and has proposed an investment strategy designed to secure predictable returns for beneficiaries. The lack of objection by beneficiaries, as averred, is a weighty factor in favour of granting the orders sought.
19. While the statutory framework supports the grant of the application, the Court's power under **Section 56** is protective: it should be exercised so as to safeguard the beneficiaries' interests and to minimize the risk of misuse of trust funds. It is therefore necessary to impose specific, practical safeguards to govern the sale process, the handling of proceeds, the reinvestment and

reporting, and to restrain self-dealing or improvident application of funds.

20. Accordingly, having regard to the statutory provisions and the authorities, and having weighed the Applicant's evidence, I find that the proposed sale and reinvestment are expedient and in the best interests of the beneficiaries, but that the grant of authority must be subject to the conditions set out below to ensure transparency, accountability and preservation of capital.

ORDERS

21. I therefore allow the Applicant's Originating Summons dated 30th September 2025 and accordingly order as follows:

- a) That the Applicant, Services and Systems Limited, be and is hereby permitted and empowered by the Court to sell the trust property known as Nairobi/Block 28/72 (formerly L.R. No. 209/2597, Grant No. I.R. 78638), upon obtaining an independent valuation and ensuring that the disposal is at the best price reasonably attainable.
- b) That the Applicant shall apply a portion of the proceeds of sale towards the payment of any properly payable beneficiary claims arising from the sale, together with the reasonable legal and transactional costs of the sale and of this Originating Summons, and towards any necessary expenses incidental to the administration of the trust.
- c) That the Applicant shall apply the balance of the net proceeds of sale, being not less than sixty per cent (60%) of such proceeds, to reinvestment in government-guaranteed tax-free bonds or other authorised instruments under **Section 4 of the Trustees Act**, and shall file in Court and serve upon the beneficiaries particulars of such reinvestment within such reasonable time, but not later than 60 days.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **1st** day of **December, 2025**.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

..... for the Applicant

..... for the Respondent

Philomena W...... Court Assistant