

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT EMBU

ELC MISC. APPL. NO. E023 OF 2025

IN THE MATTER OF LAND PARCEL NO. NGANDORI/KIBUGU/T.32

DAVID MUCHANGI IRERI (Suing as TRUSTEE for PRECIOUS MUMBI MUCHANGI (MINOR)) -----EX-PARTE APPLICANT

RULING

1. The Ex-parte Applicant, David Muchangi Ireri, moved this Court by way of a Notice of Motion dated 30th July 2025 seeking the following orders: i. (Spent) ii. THAT the Applicant be granted a vesting order and leave to offer Land Parcel No. NGANDORI/KIBUGU/T.32 as collateral so as to obtain a loan facility with Kenya Industrial Estate and the proceeds be applied towards completion of construction of a dwelling house for the family and boosting the family business. iii. The costs of the application be in the cause.
2. The application is supported by the grounds on the face of the Motion and the Affidavit of the Ex-parte Applicant sworn on even date. The Applicant deposes that the suit property was registered in his name and that of his minor daughter, Precious Mumbi Muchangi, with him acting as trustee for the minor's interest. It was their intention to construct a residential house for the family thereon. He avers that the family currently resides in a rental house in Kibugu and that they have commenced construction on the suit property but require additional funds to complete it and to boost the family business.
3. The Applicant further deposes that he has been offered a loan facility by Kenya Industrial Estate, which requires the suit property as collateral. However, because of the minor's interest in the property, the lender will not accept the title without a court order. He confirms that he has discussed the matter with his wife, Dorothy Kagendo Kimotho, who is fully agreeable. In support, he annexed her Affidavit sworn on the same date, in which she confirms the joint ownership (husband and minor daughter), the ongoing construction of the family home, the need for the loan, and her express consent to the property being charged as security.
4. The sole issue for determination is whether this Court should grant the vesting order and leave to the Applicant (as trustee) to offer the suit property as collateral for the proposed loan facility, in the best interests of the minor.
5. This Court has jurisdiction to determine the application under the Environment and Land Court Act, 2011, read together with the provisions governing land held in trust for minors.
6. The law is clear that a minor lacks legal capacity to transact in land. Section 27 of the Land Act, 2012 provides that a child shall be capable of holding title to land through a trustee and shall be in the same position as an adult with regard to liability and litigation

concerning the land. Section 47 of the Land Registration Act, 2012 permits the name of a minor to be entered in the register through a trustee or guardian but expressly states that nothing in that section enables a person under eighteen years to deal with the land, and the Registrar is required to enter a restriction accordingly.

7. Where trustees require authority to deal with trust property for the benefit of a minor beneficiary, Section 56 of the Trustee Act (Cap. 167) empowers the Court to intervene. It provides that where any mortgage or other disposition is, in the opinion of the Court, expedient for the management or administration of trust property but cannot be effected because of the absence of the necessary power, the Court may by order confer upon the trustees the necessary power on such terms and conditions as it thinks fit. Section 17(1) of the same Act further enables trustees to raise money by mortgage of trust property where required.
8. Overarching these statutory provisions is the constitutional imperative under Article 53(2) of the Constitution of Kenya, 2010, which declares that a child's best interests are of paramount importance in every matter concerning the child. This is reinforced by Section 4 of the Children Act (Cap. 141), which makes the best interests of the child a primary consideration. The Court is also mindful of Article 43(1)(b) of the Constitution, which guarantees the right to accessible and adequate housing.
9. Applying the above to the facts before me, I am satisfied that the proposed transaction is manifestly in the best interests of the minor. The suit property was acquired with the intention of providing a family home. Construction has already commenced. The family currently lives in rented accommodation. The loan proceeds are earmarked for completing the dwelling house (thereby securing the minor's right to shelter) and boosting the family business (thereby improving the family's economic welfare, from which the minor directly benefits). Both the Applicant (trustee) and the minor's mother have given their informed consent. There is no suggestion of any prejudice to the minor; on the contrary, the transaction will advance her welfare. The Applicant has demonstrated that the funds will be applied strictly for the stated purposes.
10. In the circumstances, and guided by the principles established in similar applications before this Court (for instance, the reasoning in *In re MLM (Minor)* ELC Misc. Appl. No. E024 of 2024 [2025] KEELC 3848 (KLR)), I find that the application is meritorious and made in good faith.
11. Accordingly, the Notice of Motion dated 30th July 2025 is allowed in the following terms:

(i) A vesting order is hereby issued conferring upon the Applicant (as trustee) the power to offer Land Parcel No. NGANDORI/KIBUGU/T.32 as collateral and to execute and register a charge over the same in favour of Kenya Industrial Estate Limited to secure the proposed loan facility.

(ii) Leave is granted to the Applicant to proceed with the registration of the said charge, and the Land Registrar, Embu Land Registry, is hereby directed to give effect to this order and register the charge upon presentation of the necessary documents.

(iii) The proceeds of the loan shall be applied strictly towards completion of the construction of the dwelling house on the suit property and boosting the family business, as stated in the application.

(iv) Costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT EMBU THIS 05th DAY OF MARCH, 2025.

HON. E.C CHERONO

ELC JUDGE

In the presence of:

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