



CMN (Applying as the Mother and Trustee to IM – Minor) (Environment and Land Miscellaneous Application E004 of 2026) [2026] KEELC 2149 (KLR) (17 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2149 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E004 OF 2026
BM EBOSO, J
APRIL 17, 2026
IN THE MATTER OF LAND REGISTRATION ACT, NO 3 OF 2012 LAWS OF KENYA
AND
IN THE MATTER OF LAND ACT, NO 6 OF 2012 LAWS OF KENYA
AND
IN THE MATTER OF TRUSTEE ACT, CAP 167 LAWS OF KENYA
IN THE MATTER OF
CMN (APPLYING AS THE MOTHER AND TRUSTEE TO IM –
MINOR) APPLICANT

RULING

1. On 11/1/2023, land parcel number Nyaki/Munithu/4220 was registered in the joint names of Casty Murugi Njogu and Ian Murithi (a minor). It is not clear if the Land Registrar has registered a restriction against the title in terms of Section 47 (2) of the [Land Registration Act](#).
2. On 21/1/2026, Casty Murugi Njogu brought to this court a notice of motion dated 20/1/2026 seeking orders authorizing her to create a charge against the co-owned title. She also sought an order authorizing her to execute the charge in the place of the minor as the minor’s guardian.
3. When the application came up for hearing before this court on 4/2/2026, the court directed the applicant to file written submissions on the application and address, inter alia, issues relating to: (i) the question of guardian of the minor in relation to the application; and (ii) jurisdiction of the Environment and Land Court in a matter of this nature where there is no dispute about title but there is a question on how property owned by a minor should be dealt with. The applicant subsequently filed written submissions dated 9/2/2026 through M/s Kariuki Law & Co. Advocates. The court has considered the submissions.



4. The prevailing jurisprudence is that where a question of jurisdiction of the court to entertain a matter arises, the jurisdictional question must be disposed before any other question is considered in the matter (see *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd (Civil Appeal 50 of 1989) [1989] KECA 48 (KLR)*). I will therefore first consider and dispose the question as to whether this court is seized of jurisdiction to entertain the dominant issue(s) in this suit.
5. From my reading and understanding of the application, this court is first invited to appoint the applicant as a guardian of the minor under Section 122 of the Children's Act and authorise her to execute a charge on the minor's behalf under Section 48 of the *Land Registration Act*. Secondly, the court is invited to authorise use of a land title held in the joint names of the minor and the minor's mother as a collateral in a commercial transaction. Put differently, the second issue the court is invited to consider is whether it is in the best interest of the child to create a charge against a title that is held in the name of a child/minor for the purpose of securing the best welfare of the child.
6. In my view, the above two dominant questions fall outside the jurisdiction of the Environment and Land Court which is donated by Article 162 (2) (b) of *the Constitution* and is elaborated in Section 13 of the Environment and *Land Act*. General questions relating to the appointment of guardians in relation to children are governed by the framework in Section 122 of the Children's Act 2022. The court contemplated under the said Act is defined in Section 2 as follows:

"Court" means the children's court designated under Section 90 of this Act."
7. Section 90 of the Act empowers the Chief Justice to designate children's courts. The Environment and Land Court has not been designated as one such court.
8. In exercise of its original civil jurisdiction under Article 165 (3) (a) of *the Constitution*, the High Court may, where circumstances permit, exercise jurisdiction in a matter of this nature. The Environment and Land Court's jurisdiction is limited to what *the Constitution* has donated to it under Article 162 (2) (b). Clearly, the plea for an order appointing Casty Murugi Njogu a guardian for the purposes of Section 122 of the Children's Act and Section 48 of the *Land Registration Act* falls outside the mandate of the Environment and Land Court.
9. The question as to whether it is in the best interest of the minor to create a charge against a title held in the name of the minor is, similarly, one that falls outside the mandate of the Environment and Land Court. The court is, principally, being invited to consider and determine the question relating to the best welfare of the child/minor. That is a matter for the Children's Court and the High Court.
10. The two dominant issues in this suit are issues to be considered and determined by the Children's Court and the High Court. There is no dominant issue for the Environment and Land Court in this suit. Put differently, there is no Article 162 (2) (b) dispute in this suit. That is the finding of the court on the question of jurisdiction.
11. In the absence of jurisdiction, the court will down its tools in tandem with the principle in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd (supra)*. The result is that this suit is hereby struck out for want of jurisdiction on part of the Environment and Land Court. There shall be liberty to file a competent suit in a court seized of jurisdiction. There will be no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MERU THIS 17TH DAY OF APRIL, 2026.

B M EBOSO [MR]

JUDGE



In the Presence of:

Mr. Karanja for the Applicant

Court Assistant – Tupet

