



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MILIMANI NAIROBI**  
**ELC CASE NO. 228 OF 2019 (OS)**  
**IN THE MATTER OF SECTIONS 13, 17 & 56 OF THE TRUSTEES ACT CAP 167 OF THE LAWS OF KENYA**  
**IN THE MATTER OF AN APPLICATION BY THE REGISTERED PROPRIETOR AND TRUSTEE**  
**(PAULINE WAWIRA MBOGWAH)**

AND

PAULINE WAWIRA MBOGWAH.....APPLICANT

**JUDGMENT**

1. On 5<sup>th</sup> July 2019 the applicant, Pauline Wawira Mbogwah, took out an originating summons under Sections 13, 17 and 56 of the Trustees Act, seeking leave of the court to sell apartments erected on Land Reference Number 37/262/18 and to execute necessary instruments for the disposal of the said apartments. She specifically sought the following orders:

- a. **The Originating Summons be certified urgent and be heard on a priority basis.**
- b. **The Applicant, Pauline Wawira Mbogwah be granted leave to sell the apartments erected on Property Land Reference Number 37/262/18 (Original Number 37/262/6/1).**
- c. **The Applicant Pauline Wawira Mbogwah be granted leave to sign such documents as may be necessary for and on behalf of Damaris Wangari Mbogwah, Faith Muthoni Mbogwah and Rejoice Wambui Mbogwah for the sale and transfer of the apartments erected on Property Land Reference Number 37/262/18 (Original Number 37/262/6/1).**
- d. **Costs be in the cause.**

2. The originating summons is supported by the applicant's affidavit sworn on 18<sup>th</sup> June 2019 and further affidavit sworn on 9<sup>th</sup> August 2019. The applicant has also filed affidavits sworn by Damaris Wangari Mbugua and Faith Muthoni Mbugua respectively. Her case is that she is the administrator of the estate of the late Moses Mbogwah Mainah alias Moses Mbugua Maina alias Moses M. Maina alias Moses Mbogwah Maina (the deceased). Her and the deceased are the biological parents of Damaris Wangari (now 27 years old), Faith Muthoni (now 24 years old) and Rejoice Wambui (now 13 years old). The estate of the deceased was distributed by the Kiambu Chief Magistrate Court in Kiambu CMC Succession Cause No. 212 of 2007. Land Reference Number 37/262/18 which formed part of the estate devolved to their three children and was registered in her name as a trustee. She took a loan from Housing Finance Bank to develop 16 residential units on the suit property. She would like to dispose the 16 units and use the proceeds for the best interest of the beneficiaries. Rejoice Wambui is a minor hence she cannot consent to the intended sale. She is responsible for the day to day needs of Rejoice Wambui hence the proceeds from the sale of the units shall assist her to continue providing for her.

3. I have considered the Originating Summons together with all the evidential materials placed before me. I have also considered the relevant legal framework and the common law principles which guide dealings in trustee property. Firstly, Damaris Wangari and Faith Muthoni are now aged 27 years and 24 years respectively. There is no good reason advanced by the applicant to explain why their shares of the trust property cannot be conveyed into their respective names so that they are the ones to deal with their shares of the trust property in whatever manner they may deem appropriate. I therefore decline to grant leave in relation to the shares of Damaris Wangari and Faith Muthoni. The applicant should instead convey the shares due to Damaris and Faith.

4. With regard to Rejoice Wambui, the applicant has not disclosed how much she requires for the immediate upkeep of the said minor. She has also not disclosed the total value of the trust property and how she intends to invest the proceeds of the sale. From the schedule of assets itemized in the Certificate of Confirmation of Grant, a number of the deceased's assets devolved to the applicant absolutely. The only asset

which devolved to the three children is the suit property which the applicant now seeks to dispose without disclosing to the court how she intends to deal with the share belonging to the minor. Damaris Wangari and Faith Muthoni have sworn affidavits indicating that they are not opposed to the liquidation of the trust property. In the circumstances, because the other two beneficiaries have supported liquidation of the trust property, I will allow the applicant to similarly liquidate Rejoice Wambui's share.

5. In light of the fore going, I make the following orders in disposing the Originating Summons dated 18<sup>th</sup> June 2019:-

**a. The applicant, Pauline Wawira Mbogwah, shall forth with convey to: (i) Damaris Wangari Mbogwah also known as Damaris Wangari Mbugua; and (ii) Faith Muthoni Mbogwah also know as Faith Muthoni Mbugua their respective shares in Land Reference Number 37/262/18 (Original Number 37/262/6/1).**

**b. The share of Rejoice Wambui Mbogwah also known as Rejoice Wambui Mbugua shall continue to be held in the name of Pauline Wawira Mbogwah as her trustee.**

**c. Upon conveyance of the shares as directed above, the suit property may be disposed on condition that 80% of the share due to Rejoice Wambui Mbogwah also known as Rejoice Wambui Mbugua shall be deposited in an interest earning account to be opened in Rejoice Wambui's name by the applicant and the said money shall not be withdrawn by the applicant except with the leave of the court. The remainder (20%) shall be used by the applicant solely for the upkeep of Rejoice Wambui Mbogwah also known as Rejoice Wambui Mbugua.**

**d. There shall be no order as to costs.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY OF DECEMBER 2019.**

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**B M EBOSO**

**JUDGE**

**In the presence of:-**

Mr Otieno holding brief for Mr Wilson for the Applicant

June Nafula – Court Clerk