



**In re John Mwai Wambugu & Margaret Muthoni Kuruga (Ex-Parte Applicants) (Environment & Land Miscellaneous Case E003 of 2023) [2024] KEELC 31 (KLR) (19 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 31 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND MISCELLANEOUS CASE E003 OF 2023**

**JO OLOLA, J  
JANUARY 19, 2024**

**IN THE MATTER OF AN APPLICATION OF SALE OF LAND  
HELD UNDER A TRUST BEING LAND TITLE NO. AGUTHI/  
GAKI 1879 AND LAND TITLE NUMBER AGUTHI/GAKI/1880**

**RULING**

1. By the Originating summons herein dated 21<sup>st</sup> August 2023, John Mwai Wambugu and Margaret Muthoni Kuruga (the Applicants) urge the court to grant leave and authority unto themselves to sell Land Title Number Aguthi/Gaki 1879 and Land Title Number Aguthi/Gaki /1880 and to use the sale proceeds to cater for the educational needs of Michael Kuruga Wambugu.
2. The application is supported by an affidavit sworn by the two Applicants wherein they aver at the relevant Paragraphs 1 to 9 as follows:-
  - 1). Michael Kuruga Wambugu (Minor) is our biological son as evidenced by the Certificate of Birth that is hereto annexed and marked as exhibit 1;
  - 2). In 2016, we purchased Land Title Number Aguthi/Gaki/1879 and Land Title Number Aguthi/Gaki/1880 and caused it to be registered in Trust on behalf of the minor. A copy of the Title Deeds for the said parcels of land are hereto produced as exhibits 2 and 3 respectively;
  - 3). The minor is a student at St. Andrew's School, Turi in Year 10 and we have been educating him using savings. The savings are however exhausted and there is need to dispose of Land Title Number Aguthi/Gaki 1879 and Land Title Number Aguthi/Gaki 1880 so as to obtain funds for the educational needs of the minor;
  - 4). The School fees that is currently needed for year 10 and 11 is Kshs. 1,052,900/= and the projection for year 12 and 13 are far much higher. A copy of the School's Invoice and Fee Structure are hereto produced as exhibits 4 and 5 respectively;



- 5). We have been saving for the minor's education and the savings are now exhausted given that the bank balance in an account that we had opened for the minor is currently at Kshs. 510,599.60/=. A copy of the Bank Statement is hereto produced as exhibit 6;
  - 6). We have identified a purchaser for Land Title Number Aguthi/Gaki 1879 and Title Number Aguthi/1880 and given that the said parcels of land are held in trust, we humbly pray that this court grants us leave and permission to sell these parcels of land for the educational needs of the minor;
  - 7). We hereto attach current searches of the land showing that we are still holding the same in trust for the minor. The searches are hereto produced as exhibit 7;
  - 8). The proceeds from the sale shall solely be used for the educational needs of the minor and we shall render a true and accurate account of the funds; and
  - 9). We therefore pray that this application be allowed.
3. I have carefully perused and considered the Originating Summons before the court brought ex-parte by the Applicants under the provision of Order 37 Rule (1) (f) of the Civil Procedure Rules. By the said Summons, the two Applicants who are the biological parents of one Michael Kuruga Wambugu (the minor) pray for leave of the court to authorize them to sell two parcels of land known as Aguthi/Gaki/1879 and 1880 respectively.
  4. The Summons is supported by an affidavit jointly sworn by the two Applicants wherein they aver that they are the registered proprietors of the two properties which they caused to be registered in their names in Trust for the minor. In support of their application, the Applicants have produced a copy of the minor's birth certificate which supports their contention that they are his biological parents. They have also produced copies of the two titles and an invoice from St. Andrew's School, Turi where the minor is said to be undertaking his education.
  5. The Applicants have told the court that they have been educating the minor out of their own savings which savings are now exhausted. It is their case that they have now identified someone to purchase the two parcels of land and that they intend to use the proceeds thereof solely for the educational needs of the minor.
  6. In respect of such an application, Order 37 Rule 1 of the Civil procedure Rules 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) .....



- b) .....
  - 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.
7. In the matter before me, the Applicants have demonstrated that they did purchase the two properties in the in the year 2016 and that they caused the same to be registered in trust in the name of their minor son. They now seek to sell the trust property in order to enable them raise school fees for the said minor.
8. In that respect, Section 13 of the *Trustees Act* 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 titles or other matter as the trustees think fit, with power to vary any contract for sale, and to buy in at 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.”
9. In addition, Section 56 under which the Originating Summons is anchored provides as follows:-
- “(1) Where, in the management of administration of any property vested in trustees, any sale, lease, mortgage, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the court expedient, but cannot be effected by reason of the absence of a power for that purpose vested in the trustees by the trust instrument, if any or by law, the court may by order confer upon the trustee either generally or in any particular instance the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the court may think fit, and may direct in what manner any money authorized to be expended, and the costs of any transaction, are to be paid or borne as between capital and income;
  - (2). The court may, from time to time, rescind or vary an order made under this section, or may make any new or further orders; and
  - (3). An application to the court under this section may be made by the trustees, or by any of them, or by any person beneficially entrusted under a trust.”
10. Arising from the foregoing, it is my finding that the Applicants have 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.
11. In the circumstance, I hereby allow the Originating summons herein dated 21<sup>st</sup> August 2023 and accordingly do hereby make the following orders:



- a). Leave and authority is hereby granted to the Applicants to sell Land Title Nos. Aguthi/Gaki 1879 and 1880.
- b). The proceeds of the said sale to be deposited in the Equity Bank Account held in the name of the Minor and to be applied strictly to cater for the education needs of the Minor- Michael Kuruga Wambugu.
- c). Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> DAY OF JANUARY, 2024.**

**J. O. OLOLA**

**JUDGE**

