



REPUBLIC OF KENYA



In re Irene Rose Wanjira Mararo (Applicant) (Miscellaneous Application E020 of 2024) [2025] KEELC 239 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEELC 239 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYERI

MISCELLANEOUS APPLICATION E020 OF 2024

JO OLOLA, J

JANUARY 30, 2025

IN THE MATTER OF: SECTION 56 OF THE TRUSTEES ACT, CHAPTER 167

AND

IN THE MATTER OF: SECTION 37 OF THE LAW OF SUCCESSION ACT, CHAPTER 160

AND

IN THE MATTER OF: SALE OF TITLE NUMBER KARATINA/ TOWNSHIP BLOCK 1/276

BY

IRENE ROSE WANJIRA MARARO APPLICANT

RULING

1. By an Ex-Parte Originating Summons dated 31st July, 2024, Irene Rose Wanjira Mararo (the Applicant) has sought for an order that this Honorable Court be pleased to grant leave to the Applicant to sell all that parcel of land known as Karatina/Township Block 1/276 located in Karatina Township within Nyeri County.
2. The application is supported by an affidavit sworn by the Applicant and is premised on the grounds:
 - a. That the Applicant is the registered proprietor of all that parcel of land known as Karatina/Township Block 1/276 (“the Property”) on life interest to her 4 children all of whom are of full age;
 - b. That the Certificate of Lease of the property was issued on 2nd February, 2024 after conclusion of Nyeri High Court Succession Cause No. 804 of 2011;
 - c. That the property is in a deplorable state causing more loses than gain to the Applicant;
 - d. That the Applicant has no resources to improve the property and that with the consent of her children wishes to dispose of the property;
 - e. That the Applicant has already found a willing buyer and wishes to sell the property;



- f. That the proceeds from the sale of the property shall be divided amongst the Applicant and her four (4) children; and
 - g. That the Applicant will utilize the proceeds from her own maintenance and the children wish to use their respective shares for various purposes of benefit to themselves.
3. I have carefully perused and considered the application, the affidavit in support thereof and the annexures thereto.
 4. The power of the court in matters concerning property held under a trust is provided under Section 56 of the Trustees Act Cap 167 as follows:

“ 56. Power of Court to authorize dealings with trust property.

1. Where, in the management or 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 from that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer 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 order.
 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 interested under the trust”
5. Arising from the above provision, it is evident that a trustee cannot dispose of any registered property without the authority given by a court of law. That being the case, a trustee is required to make an application such as the one before the court for the court to consider if the same is for the benefit of the beneficiaries.
 6. From the material placed before the court, it is apparent that the Applicant herein did obtain a life interest on the suit property following the death of her husband one David Mararo Waigi. A copy of a rectified Certificate of Confirmation of Grant issued on 24th July, 2023 in the Nyeri High Court succession cause No. 804 of 2011 annexed to her Supporting Affidavit indicates that the Applicant was to hold the “life interest for the children.”
 7. In that respect, Section 37 of the *Law of Succession Act* Cap 160 of the Laws of Kenya provides as follows:

“ 37. Powers of Spouse during life interest

A surviving spouse entitled to a life interest under the provisions of Section 35 or 36 of this Act, with the consent of all co-trustees and all children of full age, or with the consent of the court, shall during the period of the life interest, sell any of the property subject to that interest if it is necessary for his own maintenance. Provided that, in the case of immovable property, the exercise of that power shall always be subject to the consent of the Court.”



8. From a perusal of the material placed before the Court, it is apparent that a Certificate of Lease in respect of the property was issued to the Applicant on 2nd February, 2024. The said registration clearly indicates that it is for herself and for her to hold a life interest for the children. In her Affidavit sworn in Support of the application the Applicant depones that she is blessed with four (4) children all of whom have since attained the age of majority.
9. The Applicant has annexed to the said Affidavit a Letter of Consent executed by the 4 adult children wherein they give their consent for the sale of the property. She has also annexed a letter from the Chief Iriaini Location dated 22nd May, 2024 which letter confirms that the Applicant has 4 children whose names and identity card numbers are given. The names given in the letter by the Iriaini Location Chief conforms with the names of those who have given their consent to the sale.
10. Arising from the foregoing and given the reasons advanced by the Applicant as to why they consider the sale of the property necessary, I am persuaded that there is merit in the Originating Summons dated 31st July, 2024. I allow the same in terms of prayer No. 2 thereof with no orders as to costs.
11. Orders accordingly.

RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS SIGNED AND DATED AT MOMBASA THIS 30TH DAY OF JANUARY 2025.

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J.O. OLOLA

JUDGE

Ruling delivered in the presence of:

- a. Firdaus the Court Assistant.
- b. Ms. Nyawira holding brief for Juma Advocate for the Applicants
- c. No appearance for the Respondents

