



CM ADVOCATES LLP

Wealth and Private
Clients Business Unit

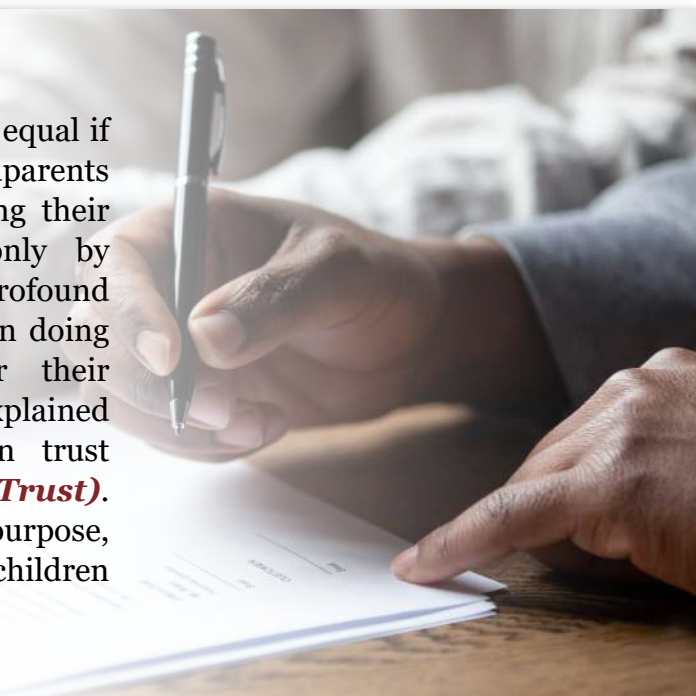


**BUILDING
BRIGHT FUTURES:
EXPLORING
GRANDCHILDREN
EDUCATION TRUSTS**

www.cmadvocates.com

INTRODUCTION

With the cost of school fees increasing at an equal if not higher rate than inflation, many grandparents seek to lend a supportive hand in financing their grandchildren's education, driven not only by financial considerations but also by the profound bond they share with their grandchildren. In doing so, they set up education trusts for their grandchildren. In our previous article, we explained the benefits of setting up an education trust (***Benefits of Setting up an Education Trust***). In this article, we will delve into the purpose, significance and establishment of a Grandchildren Education Trust, also referred to as a GET.



WHAT IS A GRANDCHILDREN'S EDUCATION TRUST?

It is a trust set up by grandparents for the primary purpose of financing their grandchildren's education. This trust structure typically involves the grandparents assuming the roles of settlors and trustees while their beloved grandchildren become the beneficiaries. The grandparents can also choose to appoint the parents of their grandchild or a corporate trustee (***Gabael Profile***) as trustee(s) of the trust.

By transferring carefully chosen assets, such as cash or investments (known as the trust fund) grandparents establish a dedicated resource to support their grandchildren's educational pursuits.

The Trust Deed plays a crucial role in outlining the terms and conditions that govern the management of the trust fund, such as how and when to distribute the funds. Notably, the trust can be structured in various ways, such as irrevocable or revocable, or discretionary or fixed, depending on the objectives of the

grandparents as the settlors. While the primary focus is typically on school fees, the trust fund can also be utilized to meet additional necessities such as textbooks, school supplies, accommodation, and other related costs.

HOW TO SET UP A GET

A GET can be set up in the following ways:

i. Living Trust- As the grandparents (settlor), you would select trustworthy individuals to act as trustees, define your grandchildren as beneficiaries and create a comprehensive trust deed. Assets would then be transferred into the trust. A well-structured living trust can come into effect during your lifetime and continue to operate even after your passing, providing a sustainable source of financial support for your grandchildren's education.

ii. Testamentary Trust- this is a GET established within a Will. In this scenario, as the grandparent(s) you can include specific instructions within your wills, designating assets from your grandchildren's inheritance to be allocated to the trust for educational

expenses.

Prior to establishing a GET, it is crucial to seek guidance from an experienced **Wealth and Private Client lawyer** who possesses the expertise to advise you on the most suitable type of GET to create to meet your family's specific needs and ensure compliance with legal requirements in Kenya

WHY SET UP A GET?

The following are compelling reasons behind establishing a GET:

1. Ensuring Quality Education- The primary motivation for creating a GET is to provide your grandchildren with access to high-quality education. By relieving the financial burden on their parents, you empower your grandchildren to pursue their educational aspirations without unnecessary obstacles. This support lays the foundation for a brighter future and enhances their opportunities for success.

2. Financial security- A GET offers significant financial security for the beneficiaries. Covering educational expenses reduces the need for them to rely on loans or face financial hardships. Notably, invoices for tuition can be sent directly to the trustees who can pay the fees directly, simplifying the process for both parents and grandparents.

3. Family Legacy and Values- For many individuals, establishing an education trust is an embodiment of their family legacy and values. It serves as a testament to the importance of education within the family lineage, creating a lasting impact on future generations. By supporting the educational pursuits of your grandchildren, you impart the value of learning and contribute to their personal growth and development.

4. Restrictions on direct inheritance- In certain cases, you as grandparents may prefer for your grandchildren to directly inherit assets specifically designated for educational

purposes, bypassing your own children (the grandchildren's parents). However, without documentation of these intentions, the distribution of your estate may be subject to varying court decisions.

For example, in the case of **Cleopa Amutala Namayi v Judith Were Succession Cause 457 of 2005 [2015] eKLR**, the estate of a deceased person (hereinafter referred to as "Lukongo") was in court for Confirmation of Grant. One of the deceased's children (hereinafter referred to as "**Namayi**") had died, therefore the grandchild of the deceased (hereinafter referred to as "Judith") was deemed to take Namayi's place as a beneficiary of the estate. However, Judith objected to the mode of distribution provided in the Summons for Confirmation of Grant as she was allocated a lesser portion of the estate than the other beneficiaries of the estate yet she was a dependant of the deceased. The reason for this, as stated by the administrators of the estate, was that Judith was in a stable marriage and had her home elsewhere with children. The court noted that though Judith had not laid a basis for her contention of dependency, she was a grandchild of Lukongo, therefore she must have been maintained by Lukongo immediately prior to his death. In looking at the facts, the court was not persuaded that Judith was a dependant. In looking at whether to confirm the grant, Justice Mrima, observed as follows:

“Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparents who died intestate after 01/07/1981 when the Act came into operation. The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents indirectly through their own parents.... The children to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren can inherit directly from their grandparents is when the

grandchildren's own parents are dead...".

The court held that denying Judith an equal proportion of the estate would be tantamount to discrimination. It, therefore, found that her proposal that 4 acres, which is even less than her late father Namayi would have actually inherited, to devolve to her was fair and reasonable. However, given the fact that there was insufficient disclosure of the status and dependency on Namayi by Judith, the said 4 acres would not directly devolve to Judith but to her late father and shall be subject to lawful administration.

FACTORS TO CONSIDER WHEN ESTABLISHING A GET:

1. Appointment of Trustees- the selection of trustees (*choosing trustees for your family trust*) in a GET is crucial to its efficient administration. Due to inevitable family dynamics, it is crucial to choose trustees that are impartial. This is particularly prudent where by the grandparents are providing funds for different grandchildren from different households. To ensure objectivity in the administration of the trust, you may appoint a corporate trustee. In addition, a corporate trustee has the resources, expertise and time to administer the GET.

2. The Different Educational Needs of Beneficiaries- it goes without saying that you may have many grandchildren at different ages. The trustees have a fiduciary obligation to manage the assets of the trust for the benefit of all the grandchildren named as beneficiaries of the trust, therefore you may be tempted to have fixed equal entitlements for all the

grandchildren to provide a sense of 'equality'. However, some grandchildren at a higher level of education, such as high school or university, may require more funds from the trust fund than those grandchildren in primary school. Similarly, on account of inflation, the costs being paid for a university education for the older grandchildren may not be the same amount to be paid for the younger grandchildren's university education when their time comes. Therefore, in such instances, it may be more practical to create a discretionary trust where the trustees have the discretion to utilize the funds in accordance with the grandchildren's individual needs whilst ensuring the trust fund is sufficient to cater for all the beneficiaries' education as far as possible.

Seeking guidance from an experienced lawyer can be invaluable in assessing the circumstances and advising on the optimal trust structure to accommodate these factors.

CONCLUSION:

GETs symbolize the deep dedication and affection that grandparents have for their grandchildren's education. By establishing a GET, grandparents not only alleviate the financial burden of educational expenses but also create a lasting legacy of support and opportunity. These trusts empower grandchildren to pursue their educational aspirations with confidence, while preserving family values and ensuring a brighter future for generations to come. To ensure the successful establishment of a GET tailored to individual circumstances, seeking guidance of a qualified lawyer specializing in trusts and estate planning is the best course of action.

HOW CAN WE HELP?

The Wealth and Private Clients team at CM Advocates LLP prides itself in having a wide variety of resources, skills and experience on matters estate planning, wealth management and trust administration spanning across the East African Region. We offer an edge to our clients based on our legacy of having structured, re-structured, amended, incorporated several forms of trusts and therefore well capable of guiding you through the process of creating a valid trust.

Should you have any questions regarding the subject of establishing a trust, or related topic, please do not hesitate to contact us on law@cmadvocates.com or privatewealthlawyers@cmadvocates.com

Contact Person & Contributor



Dianah GICHURU
Partner & Head of Unit
dgichuru@cmadvocates.com



Melissa Machua
Senior Associate,
mmachua@cmadvocates.com

Our mailing address is:

CM ADVOCATES LLP

I & M Bank House, 7th Floor, 2nd Ngong Avenue

P. O. Box 22588 - 00505, Nairobi, Kenya



Disclaimer: This alert is for informational purposes only and should not be construed as legal advice.