



COMELY GLOBAL INSURANCE AGENCY LTD

- Personal Finance & Business Solutions -

P.O. Box 37715 - 00100 Nairobi
+ 254 117 575 648 | +254 750 611 664
simon@comelyglobalconsulting.com
www.comelyglobalconsulting.com/

TRUST SETUP: CASH & FAMILY LIVING TRUSTS

Protect Generational Wealth, Avoid Probate, Control Distribution Beyond the Grave



For Families, High Net Worth Individuals and Businesses

Simon Muchiri

Licensed Insurance & Financial Advisor
+254 117 575 648 | +254 750 611 664
simon@comelyglobalconsulting.com
<https://comelyglobalconsulting.com>

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EXECUTIVE SUMMARY

Protect Generational Wealth, Avoid Probate, Control Distribution Beyond the Grave

Trusts are sophisticated estate planning tools that hold assets on behalf of beneficiaries, managed by trustees. Unlike wills (**which go through probate courts**), trusts transfer wealth privately, quickly, and with complete control over timing and conditions of distribution.

When Trusts Are Essential:

- Minor children (protect inheritance until maturity)
- Wealth preservation across generations (grandchildren's education)
- Asset protection (shield from creditors, lawsuits, irresponsible spending)
- Probate avoidance (faster, private, cheaper estate settlement)
- Special needs beneficiaries (disabled child needing lifetime care)
- Spendthrift beneficiaries (adult children who mismanage money)

The Power of Trusts:

- **Time:** Estate settles in 3-4 months vs 3-7 years probate
 - **Privacy:** Trust distributions not public (probate records are public)
 - **Cost:** Avoid 15-30% legal fees typical in probate
 - **Control:** Dictate when/how beneficiaries receive funds (age-based, milestone-based)
 - **Protection:** Shield assets from beneficiary's creditors, lawsuits, divorce
-

TRUST FUNDAMENTALS

What is a Trust?

Legal arrangement with three parties:

1. Settlor (You):

- Person creating the trust
- Transfers assets into trust
- Sets trust rules and conditions

2. Trustee:

- Person/entity managing trust assets
- Follows trust deed instructions
- Makes distributions to beneficiaries
- Invests trust funds prudently

3. Beneficiaries:

- People who receive trust benefits
- Can be current (receiving now) or future (receiving later)
- Have rights to trust assets per trust terms

How Trusts Work:

Step 1: You (Settlor) transfer assets to trust (property, cash, investments)

Step 2: Trustee holds legal title to assets (owns them on behalf of beneficiaries)

Step 3: Trustee manages assets per trust deed (invest, maintain, protect)

Step 4: Trustee distributes income/capital to beneficiaries per trust terms

- Could be immediate (monthly income)
- Could be delayed (age 25, 30, upon marriage, university graduation)
- Could be discretionary (trustee decides based on needs)

TYPES OF TRUSTS WE HELP YOU ESTABLISH

Trust Type 1: Testamentary Trust (Created by Will)

How It Works:

- Created in your will (doesn't exist until you die)
- Assets pour into trust from estate upon death
- Trustee manages per your instructions
- Beneficiaries receive distributions per trust terms
- **Drafted as part of will**

Typical Use: Parents with young children

Example: Parents with Minor Children

Scenario:

- Parents die, leave Ksh 15M estate
- Children ages 6, 9, 12 (too young for direct inheritance)

Testamentary Trust Terms:

- **Trustee:** Professional trust company
- **Beneficiaries:** 3 children
- **Distributions:**
 - Ksh 60,000/month for children's upbringing (paid to guardian)
 - Education expenses paid directly to schools
 - Medical expenses approved by trustee
 - Age 25: Each child receives 50% of their share
 - Age 30: Remaining 50% released

Protection:

- If child has addiction, financial crisis, or lawsuit, trustee can delay distribution
 - Ensures money used for children's benefit (not guardian's)
 - Professional management (guardian might not be financially savvy)
-

Trust Type 2: Family Living Trust (*Inter-Vivos* Trust)

How It Works:

- Created during your lifetime (not at death)
- You transfer assets into trust immediately
- You can be trustee during life (maintain control)
- Upon death, successor trustee distributes per trust terms
- **AVOIDS PROBATE:** Assets in trust bypass courts entirely

Typical Use: High net worth individuals wanting probate avoidance

Example: Dr. Wanjiku - Probate Avoidance

Profile:

- Prominent surgeon, Ksh 180M estate
- Complex family: Children from 2 marriages
- Wants privacy (probate records public)
- Wants fast settlement (not 5-7 years)

Family Living Trust Structure:

Trust Assets (Ksh 120M):

- 3 rental properties (Ksh 45M)
- Investment portfolio (Ksh 50M)
- Business shares (Ksh 25M)

Outside Trust (Ksh 60M):

- Primary residence (personal use)
- Liquid assets in bank accounts
- Distributed via will

Benefits:

- **Ksh 120M in trust passes immediately to beneficiaries** (no probate)
 - **Only Ksh 60M goes through probate** (significantly faster)
 - **Privacy:** Trust distributions not public record
 - **Speed:** Trust assets distributed within 3-4 months
 - **Cost:** Avoids 15-30% probate legal fees on Ksh 120M = **Ksh 18M - 36M saved**
-

Detailed Distribution Instructions:

- First marriage children: 40% of trust assets (specific percentages to each)
- Second marriage children: 40% of trust assets
- Charitable foundation: 20% of trust assets (philanthropic legacy)

Result:

- Estate settled within 4 months (vs typical 5-7 years probate)
 - Legal fees: Ksh 2M (vs projected Ksh 20M-35M without trust)
 - **Net savings: Ksh 18M - 33M**
 - Family relationships preserved (clear instructions, no disputes)
-

Trust Type 3: Special Needs Trust

Purpose: Disabled child or adult requiring lifetime care

How It Works:

- Trust funds available for beneficiary's care (medical, housing, quality of life)
 - Structured to preserve government benefit eligibility (if applicable)
 - Professional trustee manages funds for beneficiary's lifetime
 - Upon beneficiary's death, remaining assets distribute to other beneficiaries
-

Example: Parents of Disabled Child

Scenario:

- Child with cerebral palsy, cannot work, needs lifetime care
- Parents want to ensure child cared for after their death
- Concern: Lump sum inheritance would be mismanaged or exploited

Special Needs Trust:

- **Trust Amount:** Ksh 8M (from parents' estate)
- **Income:** Trust generates Ksh 60,000/month (invested in balanced fund earning 9%)
- **Trustee:** Professional trust company
- **Use of Funds:**
 - Medical care and therapy
 - Caregiver salary
 - Housing (rent or mortgage)
 - Food, clothing, transportation
 - Quality of life (entertainment, vacations)

Protection:

- Trustee evaluates all requests (prevents exploitation)
- Funds cannot be seized by creditors
- Child cannot make poor financial decisions
- Professional investment management ensures capital preservation

Upon Child's Death:

- Remaining trust assets pass to siblings (specified in trust)
 - Ensures child's care funded without depleting family wealth entirely
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Trust Type 4: Charitable Remainder Trust

Purpose: Leave legacy to charity while providing for family

How It Works:

- Transfer assets into trust (property, investments)
 - Trust pays income to you/family for specified term (10-20 years or lifetime)
 - Upon term end, remaining assets go to designated charity
 - **Tax Benefits:** Potential deductions, reduced estate value
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Example: Businessman's Charitable Legacy

Scenario:

- Businessman, age 60, wants to support children's charity
- Also wants income during retirement
- Owns Ksh 30M commercial property

Charitable Remainder Trust:

- Transfer Ksh 30M property into trust
- **Trust generates rental income:** Ksh 200,000/month
- **During lifetime:** All rental income paid to businessman (Ksh 200K/month)
- **Upon death:** Property transfers to ABC Children's Charity

Benefits:

- Businessman receives Ksh 200,000/month for life
 - Charity receives valuable endowment (Ksh 30M property)
 - Estate taxes potentially reduced (charitable donation deduction)
 - Philanthropic legacy assured
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TRUST ADMINISTRATION & TRUSTEES

Who Can Be Trustee?

Option 1: Family Member

Pros:

- No trustee fees (saves 2-4% annually)
- Knows family intimately
- Personal connection to beneficiaries

Cons:

- Emotional conflicts (saying "no" to family requests)
- May lack financial expertise
- Time commitment (ongoing responsibility)
- Personal liability if mismanages trust
- Can die or become incapacitated (disrupts trust)

Recommendation: Only for simple trusts under Ksh 2M with straightforward terms

Option 2: Professional Corporate Trustee

Pros:

- **Neutral:** No emotional conflicts, follows trust deed objectively
- **Expert financial management:** Professional investment decisions
- **Continuity:** Doesn't die or quit (company continues)
- **Legally accountable:** Regulated, audited, insured
- **Reduces disputes:** Third-party decision-making reduces family conflicts

Cons:

- **Fees:** 2-4% of trust assets annually (but often worth cost)

Recommendation: For estates over Ksh 5M or complex situations (minor beneficiaries, special needs, blended families)

CLIENT CASE STUDIES

Case Study 1: Testamentary Trust for Minor Children

Clients: Sarah & Mark (both 35), engineers

Children: Ages 8, 6, 3

Estate: Ksh 15M (house Ksh 8M + life insurance Ksh 5M + savings Ksh 2M)

Challenge: If both die, who manages money until children adults?

Solution: Testamentary Trust in Will

Trust Terms:

- **Trustee:** ABC Company (professional, neutral)
- **Guardian:** Sarah's sister (raises children)
- **Distribution Schedule:**
 - **Ages 0-18:** Ksh 50,000/month to guardian for children's upbringing
 - **Education:** Direct payment to schools (primary through university)
 - **Age 25:** Each child receives 50% of their share (Ksh 2.5M each)
 - **Age 30:** Remaining 50% released (Ksh 2.5M each)

Protection Built in:

- Guardian receives monthly support but cannot access capital
- Trustee ensures money used for children's benefit
- Professional investment management (Ksh 15M grows at 8-10% annually)
- If child has crisis at 25 (addiction, poor financial decisions), trustee can delay release

Cost:

- Setup: Ksh 50,000 (testamentary trust in will)
- Annual trustee fees: Ksh 450,000 (3% of Ksh 15M) - paid from trust assets
- **Activates only if parents die**

Peace of Mind:

"We sleep well knowing our children will be financially secure even if we're gone. Professional trustee prevents mismanagement, and our sister can raise them without money worries."

Case Study 2: Family Living Trust for Probate Avoidance

Client: Mr. Onyango, age 68, retired businessman

Estate: Ksh 85M

- 5 rental properties (Ksh 50M)
- Investment portfolio (Ksh 25M)
- Cash and assets (Ksh 10M)

Challenge:

- Complex family (2 wives, 6 children)
- Anticipated disputes over inheritance
- Wants fast, private settlement
- Concerned about 15-30% probate fees (Ksh 12.75M - 25.5M)

Solution: Family Living Trust + Will

Trust Assets (Ksh 60M):

- 4 rental properties (Ksh 40M)
- Investment portfolio (Ksh 20M)

Outside Trust (Ksh 25M):

- Primary residence (personal use, passes via will)
- Cash accounts (Ksh 10M, passes via will)

Trust Distribution:

- **First wife + her 3 children:** 50% of trust (Ksh 30M)
- **Second wife + her 3 children:** 50% of trust (Ksh 30M)
- Detailed percentages specified per trust deed

Benefits:

- **Ksh 60M bypasses probate** (trust distributes within 3 months)
- **Only Ksh 25M goes through probate** (much faster, cheaper)
- **Privacy:** Trust distributions not public record
- **Reduced disputes:** Professional trustee follows deed objectively

Results When Mr. Onyango Died:

- Trust assets distributed within 4 months
- Probate for remaining Ksh 25M completed within 9 months
- **Total settlement: 9 months** (vs typical 5-7 years)
- Legal fees: Ksh 3M (vs projected Ksh 15M-20M without trust)
- **Savings: Ksh 12M - 17M**
- Family disputes: Minimal (clear trust deed prevented major conflicts)

TRUST VS WILL: WHICH DO YOU NEED?

Use WILL When:

- Estate under Ksh 10M (probate manageable)
- Simple family (one marriage, adult children)
- No urgency for fast settlement
- Privacy not critical
- Want simplicity (lowest cost)

Use TRUST When:

- Estate over Ksh 10M (probate costs high)
 - Complex family (blended, multiple marriages)
 - Minor children (need professional management)
 - Want fast settlement (3-4 months vs 3-7 years)
 - Privacy important (not public record)
 - Special needs beneficiaries (lifetime care)
 - Asset protection goals (creditors, lawsuits)
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Use BOTH (Recommended for Ksh 20M+ Estates):

- **Trust:** Holds major assets (real estate, investments)
 - **Will:** Covers remaining assets + appoints guardians
 - "Pour-over will": Catches any assets accidentally left outside trust
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OUR ROLE AS YOUR FINANCIAL ADVISOR IN TRUST SETUP

- **Asset Inventory:** Gathers and organizes docs for all assets (investments, real estate, insurance, debts) for accurate will drafting.
- **Heir Guidance:** Builds ties with heirs/executor for ongoing asset management per wishes.
- **Attorney Coordination:** Bridges client finances/goals to attorney for aligned legal docs (will, trusts, POAs).

To provide your **estate planning needs package**, we collaborate with reputable and regulated trust companies (corporate trustees) and law firms.

FREQUENTLY ASKED QUESTIONS

Q1: Can I change the trust after creating it?

A: Depends on trust type:

- **Revocable trust:** Yes, can amend anytime (most living trusts are revocable)
- **Irrevocable trust:** No, cannot change (some tax benefits but inflexible)

Q2: Do I lose control if I put assets in trust?

A: Not if you're the trustee. Many living trusts have settlor as initial trustee (you control everything during life). Upon death, successor trustee takes over.

Q3: Can creditors seize trust assets?

A: Depends on trust structure and timing:

- **Irrevocable trust** (established years ago): Strong asset protection
- **Revocable living trust:** Weaker protection (you still control)
- **Testamentary trust** (created at death): Protects beneficiaries' inheritances from their creditors

Q4: How are trusts taxed?

A: Trusts are separate taxable entities:

- File annual tax returns
- Pay tax on income (rental, interest, dividends)
- Rates similar to individual tax rates
- Distributions to beneficiaries may be taxable to them

Q5: Can beneficiaries see the trust deed?

A: Usually yes (they have right to know trust terms). Some settlors create "letter of wishes" (private guidance to trustee, not legally binding) to keep certain information confidential.

Q6: What if trustee mismanages trust?

A: Beneficiaries can sue trustee for breach of fiduciary duty. Professional trustees insured against errors. Courts can remove trustees who mismanage.

Q7: How long do trusts last?

A: Depends on trust terms:

- Can terminate at specific event (all beneficiaries reach age 30)
- Can be perpetual (generational wealth preservation)
- Kenya law: Trusts can last indefinitely (no "rule against perpetuities" limit)

Q8: Do I still need a will if I have a trust?

A: YES. Need "pour-over will" to catch any assets accidentally left outside trust. Will also appoints guardians for minor children (trust cannot do this).

TAKE ACTION TODAY

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Comely Global Insurance Agency Ltd

☎ Phone: +254 117 575 648 | +254 750 611 664

✉ Email: simon@comelyglobalconsulting.com

🌐 Website: <https://comelyglobalconsulting.com>

Office Hours: Monday - Friday, 8:00 AM - 5:00 PM

Disclaimer: Trust establishment is a complex legal process. This proposal provides general information only and does not constitute legal advice. Trust services provided in partnership with qualified estate planning attorneys and licensed trust companies. Tax implications vary by individual circumstances.