



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

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**In re Estate of Job Kipyegon Selim (Deceased) (Succession Cause
345 of 2015) [2023] KEHC 1411 (KLR) (24 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1411 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 345 OF 2015
AN ONGERI, J
FEBRUARY 24, 2023
IN THE MATTER OF THE ESTATE OF JOB KIPYEGON SELIM -
(DECEASED)**

BETWEEN

ESTHER CHEPTONUI CHEBOCHOK 1ST PETITIONER

PHILIP SELIM 2ND PETITIONER

AND

PUBLIC TRUSTEES RESPONDENT

RULING

1. The Petitioners/Applicants filed a summons for rectification dated 28/4/2022 seeking the following orders;
 - i) That this honorable court be pleased to issued orders directing the Public Trustee office to release money to the applicant meant for the Civil Servant Group Accident cover in respect to the late JKS – (Deceased) amounting to Kshs.5,685,120.
 - ii) That certificate of confirmation of grant issued to ECC and Philip Selim on 23rd October, 2017 be rectified to include funds held by the Public Trustee office known as Civil Servant Group Accident cover amounting to Kshs.5,685,120.
 - iii) That the costs of this Application be provided for.
2. The summons for rectification is supported by the 1st Petitioner/ Applicant's Supporting Affidavit dated 28/4/2022 and sworn by ECC.



3. The 1st Petitioner/Applicant is a co-administrator of the estate of the deceased herein. The Applicant avers that a certificate of confirmation of grant was issued to the administrators on October 23, 2017 and during the issuance of the grant, the Civil Servant Group Accident cover was not included.
4. The 1st Petitioner/Applicant prays to the court that the certificate of confirmation of grant dated October 23, 2017 be rectified to include funds held by the Public Trustee Office known as Civil Servant Group Accident cover amounting to Kshs. 5,685, 120 and the same be granted to ECC.
5. The 1st Petitioner/Applicant further prays that the court do issue an order directing the Public Trustee office to release money meant for the late JKS (Deceased) held for purposes of Civil Servant Group Accident cover amounting to Kshs. 5,685,120 be released to Esther Cheptonui Chebochok.
6. The Public Trustee filed a Replying Affidavit sworn on 4/11/2022.
7. The Respondent confirmed that the Public Trustee is holding Group Life Insurance Cover compensation in the sum of Kshs. 5,685,120 in respect of the estate of the deceased paid by the deceased's employer under the Work Injury Benefits Act 2007 following the demise of the deceased through an accident.
8. The Respondent avers that section 20 of the Work Injury Benefits Act 2007 provides that compensation paid under the Act for the death of an employee shall not form part of the employee's estate, and for that reason, it was not included in the certificate of confirmation of grant since it does not form part of the deceased's estate.
9. The Respondent avers that the Public Trustee is mandated to administer Civil Servants Group Accident claims, to the deceased's dependants in accordance with section 36 (1) of the Work Injuries Benefits Act 2007 as such the Public Trustee is obligated to ascertain the deceased's dependants.
10. The Respondent avers that whilst in the process of ascertainment of the dependants, the Public Trustee established through the Deputy County Commissioner Kericho East Sub-County that the deceased was survived by a widow and a child and was in the process of adopting another child one EC which information was corroborated by the Area Chief *vide* his letter dated 4/1/2015.
11. The Respondent avers that in the application for rectification of grant dated 28/4/2022, the administrators were seeking for the release of the compensation wholly to themselves in exclusion of the deceased widow and child.
12. The Respondent avers that the deceased's widow, child and the adopted child Eunice Chepchumba have a right to a share in the Group Life Insurance Cover compensation and further that the Applicant's application was misplaced, lacked in merit and therefore should not be allowed.
13. When the matter came for hearing the public trustee did not avail the widow or other child of the deceased. The state public trustee told the court the chief who told them about the widow and child said she went out of the country to an unknown place.
14. The 2nd Petitioner/Applicant filed a Supplementary Supporting Affidavit dated 15/2/2023 and was sworn by Philip Selim a co-administrator of the deceased's estate.
15. The 2nd Petitioner/Applicant avers that sometime in 2011, the deceased brought a small girl by the name EC and placed her under the care of their mother and prior to his demise the deceased customarily adopted the little girl.



16. The 2nd Petitioner/Applicant avers that the applicants herein and the adopted child are the immediate family members of the deceased and they are not aware of any other person claiming to be a widow or child of the deceased.
17. During hearing the public trustee told the court that the Group Insurance Compensation does not form part of the Estate of the deceased.
18. I find that section 20 the [Work Injury Benefits Act](#) WIBA 2007 states as follows; "Compensation paid under this Act for the death of an employee shall not form part of the employee's estate. [In re Estate of Alex Nyumu Mulei \(Deceased\)](#) [2018] eKLR the court in upholding a preliminary objection on jurisdiction observed as follows; "I uphold the same as section 20 of the [Work Injury Benefits Act](#) is clear that Compensation is not to form part of deceased employee's estate."
19. The issue for determination in this ruling is as follows;
 - i) Whether the deceased had a widow and another child
 - ii) Whether the amount held by the public trustee forms part of the Estate of the deceased here.
 - iii) How the Group Insurance cover of Kshs. 5,683,120 should be dispersed.
20. On the issue as to whether the deceased had a widow and another child, I find that there is no evidence of the existence of such a child or widow.
21. The public trustee was given a date to avail the widow and child for hearing but the said widow and child did not appear in court.
22. The court was told that the chief who reported the same said the widow left the country to an unknown destination. The names of the widow and child are not known.
23. The 2nd Petitioner swore an affidavit stating that the deceased only had one adopted child EC. The only beneficiary of the Estate of the deceased.
24. I find that there is no evidence that the deceased had another child or widow. The only known child is the adopted daughter EC.
25. On the issue as to whether the Group Insurance Cover forms part of the Estate, I find that the answer is in the negative.
26. On the issue as to how the same should be dispersed, I find that the public trustee is under a duty to ensure the beneficiaries get the same. Section 36 (1) (c) of the [Work Injury Benefits Act](#) WIBA 2007 states as follows; "Compensation payable in accordance with the provisions of this Act may, for reasons deemed by the Director to be sufficient, be — paid to the Public Trustee to be applied for the benefit of the dependants of a deceased employee" Additionally section 5G of the [Public Trustee \(Amendment\) Act](#) No. 6 of 2018 states that the Public Trustee may receive payments of compensation under the [Work Injury Benefits Act](#), Pensions Act, Civil Servants Group Accident Insurance Scheme and any other payment arising from compensation as a result of an accident and administer the funds as prescribed. Under the Public Trustee these are payments made to the dependants of a deceased person.
27. [In re Estate of JKC \(Deceased\)](#) [2020] eKLR the court granted an order for the payment on account out of the funds held by the Public Trustee, Eldoret of –
 - i. the sum of Ksh.30,000/- to the protester for the upkeep, e-learning and other needs of the child the subject of these proceedings during the period of



school closure/holiday following the Covid-2019 Government Containment program; and

- ii. the sum of Ksh.25,000/- directly to M/S Mediheal Hospital, Nakuru on account for surgical operation and related medical care, as necessary, of the child subject of this proceeding in the Succession Cause.

28. I hereby direct that 50% of the amount be released to the 1st Petitioner /Applicant for the upkeep of the child.
29. The remaining 50% to be deposited in a trust account to be opened by the public trustee in the name of the child Eunice Chepchumba until she attains the age of 18 years.
30. The Public Trustee to open the account within 60 days of this date.
31. Mention on 7/5/2023 for compliance.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 24TH DAY OF FEBRUARY 2023.

A. N. ONGERI

JUDGE

