



REPUBLIC OF KENYA



**In re Estate of Kyale Mwendwa (Deceased) (Succession Cause 2167 of 2021)  
[2023] KEHC 17454 (KLR) (Family) (28 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 17454 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2167 OF 2021  
MA ODERO, J  
APRIL 28, 2023  
IN THE MATTER OF THE ESTATE OF KYALE MWENDWA (DECEASED)**

**BETWEEN**

**JACINTA WANGOVE MWENDWA ..... APPLICANT**

**AND**

**SAMMY MUVELAH ..... 1<sup>ST</sup> OBJECTOR**

**MUMO IKUI MWENDWA ..... 2<sup>ND</sup> OBJECTOR**

**VONZA KAVILA MWENDWA ..... 3<sup>RD</sup> OBJECTOR**

**NZAMBU MULAIMU MWENDWA ..... 4<sup>TH</sup> OBJECTOR**

**RULING**

1. Before this Court for determination is the summons for provisions of school fees, medical care, upkeep and school Related Expenses dated August 30, 2022 by which the Applicant Jacinta Wangove Mwendwa seeks the following orders:-
  1. Spent.
  2. That this Honourable court be pleased to order the Executor to pay from the Deceased's estate a sum of £18,914 (British Pounds) being tuition fees for Munyoki Mwendwa for each academic year at the Cardiff University, School of law and Politics in the United Kingdom.
  3. That this Honourable Court be pleased to order the executor to pay from the Deceased's estate a sum of £6,938 (British Pounds) being for annual rent and deposit at Howard Gardens, Adamsdown for Munyoki Mwendwa's accommodation.



4. That this Honourable court be pleased to order the executor to pay from the Deceased's estate the air travelling and related expenses for Munyoki Mwendwa plus the accompanying adult to and from the United Kingdom whenever required.
  5. That this Honourable court be pleased to order the executor to pay from the Deceased's estate a monthly sum of £750 (British Pounds) being expenses for food, upkeep, transport, clothing and other university related expenses during Munyoki Mwendwa's stay in the United Kingdom.
  6. That this Honourable court be pleased to order the executor to pay from the Deceased's estate an annual sum of Kenya Shillings 120,774/= being for medical insurance cover at Jubilee Insurance Company Limited for Munyoki Mwendwa and MM.
  7. That this Honourable court be pleased to order the executor to pay from the Deceased's estate a monthly sum of Kenya shilling 40,000/= being for speech therapy services, and monthly medical checkups for MM at 30,000/=.
  8. That this Honourable court be pleased to order the executor to pay from the Deceased's estate a monthly sum of Kenya shilling 350,000/= being expenses for food, clothing, transport, domestic worker, shopping and upkeep for MM.
  9. That this Honourable court be pleased to grant any further or orders it deems fit and just.
  10. That costs be in the cause.
2. The Application which was premised upon Section 47 of the *Law of Succession Act*, Cap 160, Laws of Kenya and Sections 49 and 73 of the *Probate and Administration rules* 1980 and all other enabling provisions of the law was supported by the Affidavit of even date and the supplementary Affidavit dated December 16, 2022 both sworn by the Applicant.
  3. Sammy Muvelah the Executor of the Estate filed a Replying Affidavit dated November 30, 2022 opposing the summons.
  4. Likewise Mumo Ikui Mwendwa, Vonza Kavila Mwendwa And Nzambu Mulaimu Mwendwa all beneficiaries of the estate of the Deceased swore an undated replying Affidavit opposing the application.
  5. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated December 19, 2022 whilst the Executor relied upon his written submissions dated January 24, 2022.

## **Background**

6. This Succession Cause relates to the estate of the late Kyale Mwendwa (hereinafter 'the Deceased') who passed away at the Aga Khan Hospital in Nairobi on November 3, 2020. A copy of the Death Certificate Serial Number xxxx is annexed to the Petition for Grant of Probate dated October 27, 2021. *Vide* a letter dated September 17, 2021 written by the Chief of Kangemi Division Kitisuri Location the Deceased was survived by the following persons:-
  - 1) Jacinta Wangove Mwendwa - Widow
  - 2) Susan Mwendwa - Widow (Deceased)
  - 3) Mumo Mwendwa - Son



- 4) Vonza Kavila Mwendwa - Son
  - 5) Suki Kaloo Mwendwa - Daughter
  - 6) Nzambu Mulaimu Mwendwa - Son
  - 7) Munyoki Mbuvi Mwendwa - Son
  - 8) MN - Daughter
7. The Deceased died testate having left a written will dated April 22, 2015. A copy of the will is annexed to the Petition for Grant of Probate.
  8. Following the demise of the Deceased, the Executor named in his will Sammy Muvelah filed a Petition for Grant of Probate with Written Will dated October 27, 2021. A Grant was duly issued on March 14, 2022. That Grant is yet to be confirmed.
  9. The Applicant who is a widow of the Deceased then filed this present application seeking orders to direct the Executor to release funds from the Estate to cater for the education, upkeep and maintenance of herself and the two children of the Deceased.
  10. The Applicant deponed that her son Munyoki Mwendwa was due to join Cardiff University and required funds to cater for his school fees accommodation and upkeep. That the minor MNM is a special needs child who requires constant medical care as well as services of a speech therapist. She further averred that it was the wish of the Deceased that a College Education Fund be set up after his demise to provide for the education and related expenses for the two children. The Applicant complained that the Executor had refused/failed to set up the College Education Fund as envisaged by the written Will.
  11. The Applicant averred that despite having made several demands to the Executor to provide the required funds, the said Executor has refused/declined to provide the monies required. She now prays that the court compel the Executor to release the amounts specified in the summons as she is financially overburdened and is unable to meet the children's expenses on her own.
  12. In opposing the application the Executor pointed out that Munyoki Mwendwa is now of age and is capable of filing matters on his own behalf. The Executor also pointed out that in his written Will the Deceased made provision for all his beneficiaries including the Applicant and her children. That the Will made provision for education and endowment funds for the two (2) children.
  13. The Executor argued that the estate does not have liquid assets to meet the requests made by the Applicant. That any attempt to release funds from the estate would be tantamount to undoing the Will in an attempt to redistribute the property against the wishes of the Deceased.
  14. The Executor prayed to be allowed time to establish the full extent of the estate and to file a summons for confirmation of Grant as directed by the court in its ruling delivered on November 4, 2022. He urges the court to dismiss this application in its entirety.
  15. The other three (3) beneficiaries of the estate also opposed the application. They averred in their Replying Affidavit that the Applicant and her children were adequately provided for in the Will. They suggested that the Applicant utilize the assets which had been bequeathed to her to realise the funds she requires.
  16. The beneficiaries allege that the Applicant is a woman of means who has the financial ability to provide for the education and upkeep of her children. That Munyoki Mwendwa has in any event already



commenced his studies at Cardiff University. That while the Applicant is now demanding exceeds what was bequeathed to her and her children in the Will.

17. The beneficiaries urge that the Applicant await completion of the Probate process when the bequest due her will be made which she can then do with as she wishes. The beneficiaries also urge the court to dismiss this application in its entirety.

### **Analysis and Determination**

18. I have carefully considered the application before this court. The Replies filed thereto as well as the written submissions filed by the parties. It is not in dispute that the Deceased left a written Will dated April 22, 2015 detailing how his estate was to be distributed. It is also not in dispute that the Applicant and the two (2) children are beneficiaries to the estate of the Deceased.
19. The Applicant is seeking to have various sums of money withdrawn in order to cater for the education and upkeep of the children of the Deceased, Pending the confirmation of the Grant.
20. It is common ground that the Applicant and her children are all provided for in the written will. The Will has made adequate provision to cater for the education of the children.
21. I am mindful of the fact that this court delivered a ruling on November 4, 2022 directing the executor to expedite the process of establishing the extent of the estate and filing a summons for confirmation of the Grant. It is not denied that Munyoki Mwendwa has already commenced his studies at Cardiff University.
22. I am not persuaded that there is urgent need to 'dip into' the estate at this stage. Beneficiaries ought to desist from looking at an estate as their personal ATM to make withdrawals from at will. There is a process of Probate. That process is ongoing. The Executor has indicated that the estate does not have liquid funds to meet the demands of the Applicant.
23. In my view this application is premature. The Applicant should exercise patience and allow the confirmation of the Grant and the distribution of the estate in accordance with the wishes of the Deceased. She will then be at liberty to utilize the bequests made to her as she deems fit.
24. Finally I find no merit in this application. The same is dismissed in its entirety. Each party to bear its own costs. The Executor costs to be met out of the estate.

**DATED IN NAIROBI THIS 28<sup>TH</sup> DAY OF APRIL, 2023.**

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**MAUREEN A. ODERO**

**JUDGE**

