



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION NO. 286 OF 2017**

**IN THE MATTER OF THE ESTATE OF FRANK MWANDUU MWANGANGI (DECEASED)**

**CIGNA INTERNATIONAL CORPORATION.....APPLICANT**

**VERSUS**

**SHEILA SYOKAU MWANDUU.....1<sup>ST</sup> RESPONDENT**

**MARYANNE KANINI MWANDUU.....2<sup>ND</sup> RESPONDENT**

**CHRISTABEL MUTAVE MWANDUU.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. Frank Mwanduu Mwangangi the deceased herein, died on 20.9.16 at the Aga Khan Hospital, Nairobi. A grant of letters of administration was on 10.7.17 issued to his daughters Sheila Syokau Mwanduu, Maryanne Kanini Mwanduu and Christabel Mutave Mwanduu. The Grant was confirmed on 2.10.18.

2. By a Summons dated 26.11.19, the Applicant, Cigna International Corporation sought the following orders:

***1. THAT Cigna International Corporation be paid the sum of USD 53,974.47 for the deceased's bank account no. xxxx at Standard Chartered Bank, Moi Avenue branch.***

***2. THAT the costs of this Application be provided for.***

3. The Application is supported by the by the affidavit sworn by Hellen Gatwiri Kiburi, the Applicant's Office and Team Manager. Hellen averred that prior to his death, the deceased was a member of the Applicant's healthcare benefits insurance plan. The terms of the plan were that the Applicant would guarantee payment to medical service providers where the deceased received treatment. On or about 30.6.16, the deceased incurred a medical bill of Kshs. 5,517,611.71 at the Aga Khan University Hospital. After assessment of the deceased's claim, the Applicant found that the hospital was eligible for reimbursement of Kshs. 5,508,307.77 (USD 54,333.28). The reimbursement was erroneously split into 2 amounts. Kshs. 41,176.20 was paid directly to the hospital while the other Kshs. 5,467,131.57 (USD 53,974.47) was erroneously paid into deceased's bank account. The Applicant thereafter settled the hospital claim in order to correct the erroneous payment made to the deceased's bank account, which resulted in double payment of the deceased's medical claim.

4. It is the Applicant's case that it is entitled to a refund of the amount erroneously paid into the Deceased's bank account. The Applicant's efforts to recover the said amount have been unsuccessful as the Deceased's bank accounts have been frozen until his estate is settled. The Applicant further stated that when this Court confirmed the Grant on 2.10.18, it directed the Applicant to prove its claim and get paid from the deceased's bank account.

5. In a replying affidavit sworn on 18.6.2020 for the Respondents, the 2<sup>nd</sup> Respondent, Maryanne Kanini Mwanduu, averred that the Applicant has no capacity to sue against the estate of the deceased as it does not have a *bona fide* claim against the deceased. The Respondents contended that the Applicant did not provide proof by way of a policy document, that the deceased was a member of its healthcare insurance cover as alleged. The Respondents further denied that the Applicant made any payment to the hospital or to the deceased's bank account. The Respondents stated that the deceased's bills at the hospital of Kshs. 5,531,801.71 and Kshs. 912,032.44 were settled by Cigna Global Health/VANBREDA and not the Applicant. The Respondents conceded the bank statement showed that an amount of USD 53,949.47 (and not USD 53,974.47, was credited to the the deceased's bank account by Cigna International Health Services Cigna Internat, and not the Applicant.

6. The Respondents contended that the Application is an attempt by the Applicants to reap from the estate of the deceased, to which it is not a legitimate creditor. They urged the Court to dismiss the Application and vary the order of 2.10.18 and confirm the grant with respect to bank account no. 87xxxx at Standard Chartered Bank Limited by way of equal distribution to the 3 beneficiaries of the estate.

7. In a rejoinder by way of a further affidavit sworn on 30.7.2020, Hellen stated that the Respondents seek to mislead the Court. Hellen claimed that while Maryanne admitted that the amount claimed by the Applicant was paid into the deceased's bank account, she denied that the same was paid into the account by the Applicant. Hellen averred that under the insurance policy, between the Applicant and Cigna Global Health/VANBREDA, the Applicant is entitled to act on behalf of Cigna Global Health/VANBREDA which changed its name to Cigna International Health Services on 24.10.14. Hellen further averred that the Applicant and Cigna Global Health/VANBREDA are one and the same entity hence the Applicant is entitled to claim the refund of the monies erroneously paid into the deceased's bank account. Hellen further accused the Respondents of employing delaying tactics aimed at frustrating the Applicant. The Applicant urged the Court to grant the orders sought.

8. I have considered the Application, the rival affidavits as well as the submissions filed by the Applicant. The Respondents did not file their submissions.

9. The Applicant's claim is for the amount sent to the deceased's bank account in error. The Applicant has exhibited a settlement note dated 7.10.16 indicating the following:

***Payee Method of payment Currency Amount Account number***

*Frank M Mwangangi Transfer USD 53,974.47xxxx*

*Standard Chartered*

*The Aga Khan Transfer KES 41,176.20 xxxx*

*University Hospital Barclays Bank of Kenya Limited*

*Dr. Said Naji A.N. Transfer GBP 180.63xxxx*

*First Direct*

10. The settlement note further indicates the reimbursement details as a ***“Claim for MWANGANGI FRANK received from THE AGA KHAN UNIVERSITY HOSPITAL”***. The total expenses are shown as KES. 5,517,611.71 while total reimbursement is shown as 54,333.28 USD (= 5,508,307.77 KES).

11. Also exhibited is a copy of a Transaction Initiation Payment Details Report from the account of Cigna International Health Services with Citibank NA London, for cross border funds transfer. The amount transferred is Kshs. 5,429,915.51 and the payment details are indicated as sn 7.10.16 for reimbursement of medical expenses. The processing date is 03.30.2017. The beneficiary is indicated as The Aga Khan University Hospital and the beneficiary account number is xxxx in Barclays Bank of Kenya Ltd, Westlands Branch.

12. The Respondents have disputed that the Applicant paid the amount claimed to the hospital and to the deceased's bank account. The Respondents stated that the deceased's bank statement showed that an amount of USD 53,949.47 was credited to the deceased's bank account by Cigna International Health Services Cigna Internat.

13. It is well settled that moneys paid under a mistake into a bank account by a third party is refundable if such mistake is brought to the attention of the bank before the same is dealt with by the bank or customer. In the case of Lazarus Masayi Onjallah v Kenya Commercial Bank Ltd [2004] eKLR, the Court of Appeal had this to say about monies paid into a bank account in error:

***On the basis of the above authorities it may be concluded that money paid by a third person to the bank either directly, or on account of a bank's customer, is refundable if it is established that it was paid under a mistake of fact and the mistake has been brought to its attention before the Bank has either paid it out to the customer, or settled its account(s) with the customer in a manner which would amount to payment, or otherwise done something which has so prejudiced its position that it would be inequitable to require a refund.***

14. The Applicant has stated that it paid the subject amount to the deceased's bank account in error. This has therefore resulted in double payment, to the deceased's bank account and to the hospital's bank account. I have seen evidence that Kshs. 5,429,915.51 was paid by Citibank NA London to the hospital's bank account with Barclays Bank. What I have not seen is a Transaction Initiation Payment Details Report from Citibank or any other document showing that the Applicant made payment into the deceased's bank account as claimed. In other words, the Applicant has not placed any evidence before the Court to support the claim that it made double payment in respect of the deceased's hospital bill. Indeed, the amount claimed by the Applicant is different from the amount in the bank statement exhibited by the Respondents. For this Court to grant the orders sought, the Applicant was required to demonstrate that payment of the amount in question was in fact paid into the deceased's bank account. The settlement note dated 7.10.16 and relied upon by the Applicant, is a document prepared by the Applicant and is not sufficient to persuade the Court that the amount of USD 53,974.47 was in fact paid to the deceased's bank account. The position would have been different had the Applicant provided proof by way of a bank payment advice that the amount in question was in fact paid into the deceased's bank account with Standard Chartered Bank Limited as alleged.

15. Further, the documents exhibited by the Applicant showing that Cigna Global Health/VANBREDA changed its name to Cigna

International Health Services are not in English and no translation has been provided. The Applicant has also not indicated to the Court where in the exhibited information circular, the Applicant is authorized to act on behalf of Cigna Global Health/VANBREDA.

16. The foregoing notwithstanding, the Court is keenly aware that the Respondents have conceded that the amount of USD 53,949.47 was in fact paid into the deceased's bank account by Cigna International Health Services Cigna Internat. The Court further notes that the Respondents did state that the hospital bill was paid directly to The Aga Khan University Hospital by Cigna Global Health/VANBREDA.

17. Should the estate keep the amount in question because the Applicant has not shown any nexus between it and the remitter? I think not. Other than stating that the amount was not deposited by the Applicant but by another entity, the Respondents did not state the purpose for which the payment was made into the deceased's bank account. Additionally, the Respondents did not demonstrate to the Court that the amount in question rightfully belonged to the estate. A careful look at the Transaction Initiation Payment Details Report and the bank statement shows that both payments were made by Cigna International Health Services. The payment details in the payment to the hospital indicate sn 7/10/2016 while the payment to the deceased's bank account shows settlements 0007.10.16. Given the circumstances herein, I am persuaded on a balance of probabilities, that there was double payment and the amount in the deceased's bank account is actually a debt owed by the estate to the remitter.

18. In its order of 2.10.18, the Court excluded the proceeds in the deceased's bank account in question, in the confirmation of the Grant, pending the hearing and determination of the Applicant's claim. The Respondents have asked the Court to dismiss the present Application, vary the order of 2.10.18 and confirm the grant with respect to bank account no. xxxx at Standard Chartered Bank Limited and distribute the proceeds thereof in equal shares to the 3 beneficiaries if the estate.

19. Section 83 of the Act lists the duties of personal representatives. One of those duties is **to ascertain and pay, out of the estate of the deceased, all his debts**. The Respondents herein, as administrators of the estate of the deceased are obligated in law to pay out of the estate of the deceased, all his debts after ascertaining the same. Thereafter, the estate may be distributed in accordance with Section 83(f) of the Act which provides:

***subject to [section 55](#), to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;***

20. As indicated, the Respondents have not demonstrated that funds paid into the deceased's bank account belong to his estate. As administrators of the estate of the deceased therefore, the Respondents are under a statutory duty to refund the said amount to the remitter. The prayer by the Respondents that the said amount be equally distributed to them is indicative of parties who seek dishonest benefit. To fail to refund this amount will result in the estate unjustly enriching itself at the remitter's expense, which the law cannot tolerate. This was the holding in the case of Madhupaper International Ltd & another v Kenya Commercial Bank Ltd & 2 others [2003] eKLR where Kuloba, J. stated:

***Broadly founded upon the aim of equity to do justice between parties, the doctrine of unjust enrichment and the remedy of restitution to counter unjust benefit proceed upon the realization that to allow a defendant to retain such a benefit would result in his being unjustly enriched at the plaintiff's expense, and this, subject to certain defined limits, will not be tolerated by the law, and owing to the importance and aim of this doctrine in every advanced and civilized system of justice:***

21. In the end and in view of the foregoing, I make the following orders which are necessary for the ends of justice:

- i) The Application dated 26.11.19 lacks merit and the same is hereby dismissed.
- ii) Confirmation of the grant in respect of the deceased's bank account no. xxxx at Standard Chartered Bank Limited, Moi Avenue branch, which is pending, shall only be done after the sum of USD 53,949.47 has been paid to the remitter, Cigna International Health Services Cigna Internat.
- iii) The Respondents shall pay the sum of USD 53,949.47 from the deceased's bank account no. xxxx at Standard Chartered Bank Limited, Moi Avenue branch to the remitter, Cigna International Health Services Cigna Internat within 14 days of the date hereof.
- iv) Mention on 22.3.22 to confirm compliance and for directions.
- v) There shall be no order as to costs.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 25<sup>TH</sup> DAY OF FEBRUARY 2022**

.....

**M. THANDE**

**JUDGE**

**In the presence of: -**

..... **for the Applicant**

..... for the Respondents

..... Court Assistant