



REPUBLIC OF KENYA



KENYA LAW
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**Ngomo & another v King’oo (Succession Cause E40 of 2021)
[2022] KEHC 10419 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10419 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE E40 OF 2021
GV ODUNGA, J
JUNE 23, 2022**

BETWEEN

GRACE MUTHEU NZIOKI 1ST ADMINISTRATRIX

ROSE NTHENYA NGOMO 2ND ADMINISTRATRIX

AND

ITUMBI KING’OO OBJECTOR

RULING

1. By summons dated September 27, 2021, the objector/applicant herein seeks an order that reasonable provision be made for him as a dependant of the deceased herein, Benjamin Nzioki Kingoo and that the administrators be compelled to file for confirmation of grant in respect of the deceased’s estate.
2. According to the applicant, she is the biological mother of the deceased and she is aged 93 years old. According to her, due to the sudden death of the deceased in a road traffic accident, he did not make any gifts in contemplation of death to the applicant or to the other dependants. Upon the death of the deceased, the 1st petitioner, Rose Nthenya, the deceased’s wife obtained a letter from the chief indicating that the only beneficiaries to the estate of the deceased were herself and her two children and failed to inform birth the chief and this court that the objector/applicant was still alive and was wholly dependent on the deceased.
3. It was averred that the said petitioner together with one Moses Ngomo Mutunga, a son to the 1st petitioner’s sister, who has no locus in the deceased’s estate proceeded to petition for grant of letters of administration for the estate of the deceased which grant was issued on July 21, 2016 to the said persons. The objector disclosed that she subsequently applied for the nullification of the said grant which application is yet to be determined. However, the said grant was revoked on December 15, 2020 and a new one issued due to want of jurisdiction on the part of the court that issued the earlier grant.



4. According to the objector, the deceased's assets are currently valued at over Kshs 90,000,000/-. She averred that she suffers from hypertension, diabetes mellitus type II and osteoarthritis which condition has rendered her partially blind hence incapable of moving without an aid and controlling her bowel movements. As a result, she is fully dependent on medication in order to manage her health conditions. Apart from that she requires physiotherapy at least twice a week to manage her arthritis. As a result, she is physically and psychologically incapable of engaging in any gainful employment or income generating activity, being a widow having lost her husband in 1970s.
5. According to the applicant, prior to the death of her deceased son, the deceased maintained her fully by catering for all her basic needs including clothes, shelter and medical care. It was her deposition that on average, the deceased used to spend about Kshs 69,000/- per month in catering for her basic needs and medical care particulars of which she set out. It was however, her position that due to inflation, the said sum has now increased to Kshs 80,000/-. It was her evidence that prior to the death of the deceased they were in very good terms and the deceased would visit her at least once a month. However, since the death of the deceased, the administrators have not maintained any relationship with her and are therefore not alive to her living and health conditions and she has had to rely on well wishers including her priest to assist her in meeting her daily needs and medical care. On the other hand, the other dependants are well catered for with the 1st petitioner having a regular income generating employment including income generating business with a monthly income of Kshs 200,000/-. She disclosed that the deceased also had rental properties in Machakos Town which have not been accounted for.
6. According to the applicant despite her attempts to approach the 1st petitioner to assist her, the 1st petitioner has adamantly declined to do so leaving her with no option but to seek the assistance of this court.
7. In her response the 1st petitioner stated that the same lacks merit and ought to be dismissed with costs. It was averred that the 1st Petitioner was only able to secure the grant in this cause during this month. She however denied that the estate is worth Kshs. 90,000,000/= and stated that the said allegations is misleading for the following reasons:-
 - a. There is no cause of action pending before any court for payment of any accident benefits of Kshs. 50,000,000/=.
 - b. Motor vehicle registration number KBR xxxZ became a write off at the time of the accident which led to demise of the deceased.
 - c. Motor vehicles registration numbers KBR xxxF and KAW xxxN are not in any working condition.
 - d. Funds in account numbers xxxxxxxxxxxx at KCB, Machakos and xxxxxxxxxxxx Co-operative Bank, Machakos are proceeds from the business the Petitioner was running together with her husband to support their family.
 - e. The petitioner is not aware of any rental properties in Machakos which are in the name of the deceased.
 - f. The deceased did not have any shares and stock in Chaka Bookshop and Twiga Stationers and Printers Ltd.
 - g. Kingsway Consolidated was a bookshop the 1st Petitioner was running with her husband as their family business was unable to access funds from the accounts for the business.



8. The petitioner however denied that it was the deceased who was solely taking care of the Applicant as the applicant has other children. She disclosed that the applicant and some of her sons had sold some parcels of land to the deceased and that upon the demise of the deceased, the applicant together with her other children disposed of all the land they had sold to the deceased without involving the 1st petitioner and they have never accounted for the proceeds thereof. The 1st petitioner averred that there has been an attempt by the applicant to exaggerate the value of the estate and access as much funds as she can, not caring about the welfare of the 1st petitioner and the children of the deceased who are still continuing with her education.
9. The court was urged, before granting the application, to direct the applicant to tender account of all the proceeds of the land parcels of the deceased that the applicant sold and also the Kshs. 500,000/= that this court allowed her to access when the court rendered the application dated 9.8.2021 as a mark of good faith.
10. The 1st petitioner disclosed that after receiving the grant dated November 2, 2021, together with her co-administrator they have instructed their advocates on record to file an application to enable them get confirmation from the banks on the funds held in the accounts to enable them to prepare the application for confirmation. It was therefore her view that the applicant ought to wait for the filing of the application for confirmation to raise her claim there.
11. In a rejoinder, the applicant averred that the 1st administrator was deliberately delaying filing for confirmation of grant and making unnecessary applications to ensure that she dies before this case is heard and determined. She averred that the Administrators had already obtained an order dated October 23, 2018 allowing them to confirm the account balance in the deceased's bank accounts and that it was on the basis of that order and the bank statements obtained thereof that the administrators swore an Affidavit dated September 23, 2020 seeking to revoke the Grant dated July 21, 2016 and transfer the subordinate file to the High Court.
12. According to the Applicant, she had been advised by her advocates of record that if she died before her application for reasonable provision is determined, the application would lapse automatically, to the administrators benefit.
13. The 1st petitioner further averred that:
 - a. The deceased was the only child who schooled past secondary school level hence she was fully dependant on him.
 - b. She blessed with 9 children, 4 of whom are now deceased and 5 who are still alive being:-
 - i. Lazarus King'oo- unemployed and suffering from a mental disorder
 - ii. Benjamin Nzioki Kin'goo - deceased
 - iii. Rose King'oo - deceased
 - iv. Agnes King'oo - deceased
 - v. Mumbua King'oo - deceased
 - vi. Patrick Mutua King'oo - unemployed
 - vii. Dominic Soi King'oo - unemployed
 - viii. Ann Syombua - unemployed



- ix. Jackline Katile - casual laborer
 - a. Her surviving children are struggling to take care of their own families let alone her.
 - b. On various dates between 20.02.2016 and 09.04.2016, the 1st Administrator was summoned by the Council of Elders of “Mbai ya Soi” to discuss her welfare in light of her poor health and lack of income but the 1st Administrator refused to honour the summons prompting the Applicant to visit her on or about January 2017 to seek direct assistance but the 1st administrator chased her away forcing her to narrate her experience to the council of elders during a meeting held on 12.01.2017.
 - c. Since then, she has been relying on well-wishers, including her Priest who has greatly helped her time and again to purchase drugs since they are quite expensive.
14. According to the Applicant, since she was granted access to Kshs.500, 000/- by this court, she has have been religiously visiting the hospital.
 15. The applicant disclosed that in or about the year 2019, she visited the 1st administrator’s advocate’s office, Mutia J.M & Associates Advocates, to implore upon him to convince his client to give her some monies to seek medical attention and upon inquiring from the said Advocate the current value of the Estate, she was informed that the Estate was valued at over Kshs.70, 000, 000/- which she believed to be true because at the time, the Advocate had already accessed the deceased’s Bank statements in KCB and Co-operative Bank A/c Numbers xxxxxxxxxxxx and xxxxxxxxxxxx pursuant to the court order dated 23.10.2018. In her evidence, the Estate also comprises of several parcels of land with developments thereon for both personal use and commercial use (rental properties). She averred that based on her conversations with the deceased and actual visits to the sites that he owned various properties which were not disclosed in the Petition for Letters of Administration namely:-
 - a. Eight (8) two bedroom apartments in Eastleigh Machakos
 - b. 6 Single room units for rent in Katoloni
 - c. Kingsway Consolidated Ltd
 16. The Applicant averred that the 1st Administrator is fully aware of these properties as she has been acting as the Manager/Caretaker and consistently receiving rent from the tenants since deceased passed on. She disclosed that Motor Vehicle Registration Number KBR xxxZ was insured at the time of her son’s accident and was duly paid by the insurance company after it was written off. However, motor vehicles registration Numbers KBR xxxF and KAW xxxN were still in good mechanical condition because her grandson, Peter King’oo Nzioki, had been spotted severally in Machakos town driving the said vehicles. In any case, she averred, if the said vehicles have deteriorated to the point of being in no working condition, the same is attributable to the Administrator’s negligence as she ought to have taken care of the Deceased’s Assets.
 17. The Applicant denied that the Administrator had been using the money held in the deceased’s Bank accounts to run her home as she does not have access to the money therein having been denied access by the court. According to her, the 1st Administrator was not jointly running the bank accounts held in KCB and Co-operative Bank with the deceased. She asserted that if the 1st Administrator had been running the said accounts jointly; she would have known the exact money held in the Bank accounts prior to filing Succession Case No 83 of 2016 in the Chief Magistrate’s Court, yet it was only after obtaining the court order dated 23.10.2019 that she obtained the Bank Statement and filed



- applications for revocation of the Grant and transfer of the suit to the High Court due to lack of pecuniary jurisdiction.
18. It was the Applicant's averment that none of the said Agreements for Sale attached were made in favour of a third party and that in fact, they all bear dates prior to the deceased's death and are made in favour of the deceased. She stated that the portions of land which she had sold to her late son were still part of his Estate and are available for distribution to his wife and children. According to her, she was unaware if her surviving sons had sold their portions to other third parties. In any case, she asserted, they are adults hence individually responsible for their actions.
 19. It was averred that the Applicant, contrary to the 1st Administrator's assertion that she wanted to reap from the Estate, all she was requesting was for this Court to grant her reasonable provision based on her current needs in consideration of the value of the Estate.
 20. The Applicant averred that she educated the deceased on her own by selling her parcels of land to raise his school fees hence had a legitimate expectation to benefit from his estate.
 21. In his submissions, the applicant cited section 29 of the *Law of Succession Act* and relied on Succession Cause No. 634 of 2012-*In The Matter of The Estate of Albert Musyoka Mueti (Deceased)* (2020) eKLR, where Kemei, J found that the deceased's parents had proved their dependency on the deceased by producing evidence that the deceased was given land to build on by his father. The court also noted that the deceased's mother had expressed legitimate expectation to benefit from the estate of the deceased having schooled him.
 22. In this case, it was submitted that the applicant is the biological mother to the deceased and that the council of elders disclosed that it was open and general knowledge that the applicant was being maintained by the deceased prior to his death. The applicant also produced medical records which showed that since her son's demise, she was not able access proper medical care because her only source of support was gone. The applicant also averred that having been a widow since the 1970s and single-handedly educated the deceased; she had a legitimate expectation to benefit from his estate.
 23. From the foregoing, it was submitted that the general knowledge by members of the public that the applicant was maintained by the deceased; the lack of proper medical care due to lack of funds following the deceased's death; and the legitimate expectation by the applicant that she was to benefit from the estate having educated him single-handedly constitute sufficient evidence that the applicant was a dependant of the deceased who was maintained immediately prior to the deceased's death. Having proved that the applicant was a dependant of the deceased who was maintained by the deceased immediately prior to his death, the court was urged to determine the terms of reasonable provision for the dependant.
 24. It was submitted that sections 26, 27 and 28 of the *Law of Succession Act* gives the court discretion in making orders regarding dependants. Reliance was placed on *Re Estate of Joshua Orwa Ojodeh- (Deceased)* [2015] eKLR, where the mother of the deceased sought reasonable provision from the Estate of her son whose net value was Kshs.20, 000,000/-. Upon considering various factors including the fact that the mother had 4 other children who were well off; she was still benefiting from her late husband's estate; the deceased's son was studying in the UK and required massive support etc., the court awarded the mother a lump sum payment of Kshs. 2,000,000/-.
 25. In the instant case, the applicant averred that the estate is valued at over Kshs. 90,000,000/- which figure is derived from the administrator's advocates own admission to the applicant. It was contended that although the administrators failed to disclose the exact value of the estate while filing the application dated 24.02.2021 to transfer the subordinate court file to the High Court, the estate is valued at more



than Kshs. 20,000,000/-. It was averred that while the applicant produced medical records showing that she is terminally ill and incapacitated hence unable to engage in any gainful activity, the other dependant's of the estate being her daughter-in-law and grand-children are all financially stable. The deceased's wife is a teacher at the Masaku School for the Physically Disabled. The deceased's daughter, Grace Mutheu Nzioka, is a medical student at the University of Nairobi- government sponsored while the son a student at Strathmore University. According to the applicant, the said beneficiaries are also benefiting from business profits and rent proceeds derived from Kingsway Bookshop Ltd situated in Machakos town which is the main distributor of stationeries and books in the Machakos and Kitui region; and Tenants occupying the eight (8) 2-bedroom apartments constructed in Eastleigh, Machakos respectively.

26. It was averred that the applicant produced payment receipts and medical records in support of her estimate of monthly expenses of Kshs. 69,000/- and that due to the deceased's sudden death, he did not bequeath any gifts to his mother. In any case, in the African culture, it is presumed that children shall outlive their parents; they therefore do not usually bequeath any permanent gifts to their parents save for providing a good life for them in their sunset years.
27. In light of the circumstances above, the value of the Estate and the estimate of the applicant's monthly expenses, it was submitted that it is fair and just that the Applicant be granted a lump sum payment of at least Kshs. Five Million (5,000,000/-). In arriving at the said figure, the court was urged to take notice of the malice and cruelty the Applicant has suffered in the hands of the 1st administrator who has actively tormented and ridiculed her since her son's demise, thwarted all efforts to settle this matter out of court thereby dragging the suit for 6 long years; hence causing the applicant immeasurable pain and torture.
28. On behalf of the petitioners, it was submitted that section 26 of the *Law of Succession Act* provides for reasonable provision for dependants as the court deems fit. However, section 29 which lists the dependants does not make parents automatic dependants. Therefore, it must be shown that the deceased should have been maintaining them immediately before his demise. The administratrixes in this case have posited that the objector was not being maintained solely by the deceased. She was capable of raising money from other sources. For instance, as it is shown in annexures to the supporting affidavit she even sold some pieces of land to the deceased which have been sold to third parties.
29. It was submitted that even if the court was to make any provision it has to do so when there is certainty on the value of the estate. As deposed in the supporting affidavit, the Administratrixes do not have the exact figures of the funds in bank account. The Objector has however, tried to bring further assets which the Administratrixes are not aware of instead of bringing documentation in support to enable the Administratrixes to confirm their existence. Without documentation, it was submitted that the existence of those assets remain a mere allegation which serves the purpose of exaggerating the value of the estate for the benefit of the Objector.
30. The court's attention was drawn to the fact that the objector was a mother to the deceased while the 1st and 2nd Administratrixes are widow and daughter to the deceased and that the widow of the deceased has not drawn anything from the estate of the deceased. The court was urged to balance the rights of the widow of the deceased and his children to also inherit the estate of the deceased against the right of reasonable provision to the parent so that the provision does not disadvantage other beneficiaries and should also take into account that the estate is not generating any income.
31. It was submitted that any party seeking to be provided for should do so in good faith. She should not mislead the court by exaggerating the value of the estate, as the objector has done and avoiding to account. This court having already granted the objector access to Kshs. 500, 000/= from the estate,



she has an obligation to account for the same. Despite the issue having been raised in the replying affidavit, the objector has chosen to give it a casual attention and only and even the annexed receipts to the further affidavit do not total Kshs. 100,000/= . The order for reasonable provision remains a discretionary order and the objector should be in a position to justify the same.

32. The petitioners distinguished this case from *Ulda Aloo Ojodeh vs. Mary Awour Ojodeh* [2015] eKLR which they submitted is not binding but merely persuasive. Secondly the circumstances in that cause are totally different. The amount in question was already ascertainable and upon apportioning the funds his Lordship confirmed the grant. It is therefore not applicable in this case.
33. It was submitted that in this case the Objector has not justified the need for her to be allowed to access any further funds under section 26 of the *Law of Succession Act*, and that the best way of addressing the issue would be in proceeding with confirmation expeditiously. In this case it was submitted that the administratrixes are in the process of doing so. While the applicant relied on the affidavit which was filed to support revocation of grant to assert that they are aware of the funds in the accounts, it was submitted that that position is taken in bad faith since it was stated that the accounts were holding cash which was more than Kshs. 20,000,000/= hence the figure was not certain and they could have attached the statements if they had. In the circumstances, the court was urged to separately consider the application by the administratrixes on access to bank statements.
34. It was therefore submitted that the objector has not justified why any further provision should be made for her and the petitioners prayed that the court dismisses prayer 1 in the application and instead the court should give directions on reasonable timelines for the filing of an application for confirmation.

Determination

35. I have considered the instant application which is premised on section 26 of the *Law of Succession Act* which provides as follows:

Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased's estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate.

36. From the above section it is clear that an application thereunder can be made by or on behalf of a dependant. The section applies where the will, gift or law or combination of all the three does not make reasonable provision for a particular dependant. The order that the court is then required to make is for such reasonable provision as it thinks fit for that dependant out of the deceased's net estate. Pursuant to the said provision the court may in its discretion under section 27 of the Act order a specific share of the estate to be given to the dependant, or to make such other provision for him or her by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit. However, before doing so the court must make a specific finding that the will, gift or law or combination of all the three does not make reasonable provision for the particular dependant.
37. In determining whether or not that is the position, the court is required under section 28 of the Act to consider the following:
 - a. The nature and amount of the deceased's property;



- b. Any past, present or future capital or income from any source of the dependant;
- c. The existing and future means and needs of the dependant;
- d. Whether the deceased had made any advancement or other gift to the dependant during his lifetime;
- e. The conduct of the dependant in relation to the deceased;
- f. The situation and circumstances of the deceased's other dependants and the beneficiaries under any will;
- g. The general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant.

38. Since no allegation has been made about the existence of a will or gift by the deceased, it was therefore upon the applicant to satisfy the court that the provisions of the *Law of Succession Act*, which is the relevant law in intestate succession, does not make reasonable provision for her. That is why the law requires the court to consider the general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant. It is only after that that the court may proceed to order for either lump sum payment of periodical payments. Apart from that the applicant was required to present before the court evidence showing the nature and amount of the deceased's property. In this case, the Applicant contends that the deceased's assets are currently valued at over Kshs 90,000,000/-. Challenged to prove this fact, she relied on the fact that when the respondents applied for the transfer of the matter from the magistrate's court to this court, they cited jurisdiction as their basis for doing so and placed the value of the estate as being in excess of Kshs 20,000,000/- Since it was the Respondent's themselves who placed the value of the state as being in excess of Kshs 20,000,000.00 the Respondents cannot turn round and contend that the estate is actually not worth that much. However, the presumption is only to the extent that the estate is worth more than Kshs 20,000,000.00. Any person who alleges that it is any particular figure more than the said Kshs 20,000,000.00 must prove the same.

39. However, the petitioners cannot now claim that part of the estate of the deceased is co-owned or that the 1st Petitioner, in her own right, as opposed to her beneficial right, also has a stake in the said Kshs 20,000, 000/- worth of the estate. While the said amount may not necessarily be the net worth, the Court would presume that at least the gross worth of the estate must be over Kshs 20,000,000.00.

40. In order to determine whether or not reasonable provision has been made to a dependant I agree with the decision in the case of *R N M vs. R M N* [2017] eKLR that:-

“Proof of dependency is thus a condition precedent to the exercise of the discretion in section 29(b) cited hereinabove. In addition, while considering the meaning of a dependant under section 29 of the Act, the court held as follows in the case of *Beatrice Ciamutua Rugamba vs. Fredrick Nkari Mutegi & Others, Chuka Succ. Cause No. 12 of 2016*:-

"From the foregoing, a dependent under section 29 (b) and (c) must prove that he/she was being maintained by the deceased immediately prior to his demise. It is not the mere relationship that matters, but proof of dependency."

I note in this regard that the applicant did in her affidavits admit that the subject children were not the deceased's biological children, and did not provide any additional evidence of how the Deceased



maintained the children, and the responsibility he undertook with respect to the said children. This court cannot in the circumstances make any conclusive findings as to the said children's dependency on the Deceased at this stage, which finding will have to await the confirmation proceedings."

41. It is however clear that such proof is only required where the applicant falls within the category contemplated in section 29(b) of the Act and these are the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death. Accordingly, the authority is not relevant where the claimant falls under section 29(a) of the Act and these are the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death. The applicant herein being the mother of the deceased therefore has to prove dependency. In this case, the Applicant has deposed to the fact that prior to the demise of the deceased, the deceased was maintaining her in terms of her medical and nutritional needs. The respondents contest this and state that the applicant has other children who are taking care of her and that it was not just the deceased who was doing so. This fact is however contested by the Applicant who avers that her other children have no financial means to take care of her. It is however, on all fours that the Applicant did sell some of the properties to the deceased. One would presume that the said sale was for value. If that is the position, it would follow that the Applicant had her own source of income and it cannot be said that she solely relied on the deceased as her source of sustenance. While, being the mother of the deceased, it is only to be expected that the deceased would take care of her, that is not the same thing as saying that she solely relied on the deceased.

42. To my mind, unless an applicant complies with the above provisions, it would be premature to seek an order for the release of certain sums forming part of the estate to one or some of the beneficiaries since to do so may well amount to partial distribution thereof. I therefore agree with the decision in the case of *M W vs. P N M & H T K* 2017 (supra) that :-

"...this rush to cash out the minor's entitlement is not in her best interests. The best interests of the child will be served through the conclusion of the succession cause, as required by section 82(d) of the *Law of Succession Act*, confirmation of the grant and the determination of what the child is entitled to, which will definitely include what the applicant is entitled to, if at all, and what the respondents are entitled to. The mix up in the application before me can only be to the detriment of the interests of the child. In the meantime, I need to remind the applicant that the child has the right to parental responsibility as per article 53(1) (e) of *the Constitution* which provides that both the mother and father have the duty to fulfil this right. Upon the death of the father this responsibility remains with the mother. She retains the parental responsibility for the child and is expected to make decisions that are in the best interests of the child.

43. Partial distribution unless consented to was rightly declined by the court in *In re Estate of Gerisbon Kamau Kirima (Deceased)* [2015] eKLR where it was noted inter alia that:-

"I am therefore of the view that Mr. Wanjau is only entitled to the payments that were consented upon by all the beneficiaries and the interests of justice cannot be served by partial distribution of the estate to one beneficiary whatever his circumstances, unless the beneficiaries consent, as they have previously done, to such partial distribution."

44. Therefore, in the absence of satisfaction of the conditions stipulated in section 26 of the *Law of Succession Act*, a release of monies or properties forming part of the estate of a deceased person pending



confirmation of the grant, which amounts to partial distribution as opposed to making reasonable provision, can only be with consent of the beneficiaries.

45. In this case, I am not satisfied that the Law of Succession Act does not make reasonable provision for the applicant. In application such as the present one, the court ought to be very cautious since the administration of the deceased's estate is yet to be undertaken. The real beneficiaries of the estate and their respective entitlements are yet to be identified and determined. In such applications, there is always a risk that the estate may be deflated before the distribution is done.
46. In this case, this court on August 18, 2021 ordered the release of Kshs 500,000.00 to the applicant. The applicant has not accounted for how this amount was spent. The applicant ought to know that whatever sum is released to her is on account hence must be accounted for. She ought not to consider such a sum to be the amount she is entitled to in the estate since the amount that she is entitled to, if any, is yet to be determined. It may well be that at the time of the distribution, she might be called upon to make good some of the money that might have been paid over to her if it is found that she was not entitled to the same. Therefore, the applicant ought to be prudent in applying any sum of money that the court may order to be released to her.
47. Having considered the issues placed before me, it would seem that the parties herein, due to mistrust between them and suspicion of each other, have adopted a combative rather than a reconciliatory posture. It is in their interest that they learn how to co-exist with each other now that the deceased is no more.
48. In order to expedite the matter, I grant the application dated May 16, 2022 and direct the release of Kshs 150,000.00 from the deceased's bank account in Kenya Commercial Bank Account Nos. xxxxxxxxxxxx and xxxxxxxxxxxx to cater for the applicant's medical upkeep and sustenance. I direct that this matter be referred to mediation and a mention date be fixed after the prescribed 60 days. In order not to subject the estate to unnecessary depreciation the parties must approach mediation in good faith in the spirit of give and take and ought not to treat the deceased's estate as a cash cow.

RULING READ, SIGNED AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 23RD DAY OF JUNE, 2022.

G. V. ODUNGA

JUDGE

In the presence of:

Ms Muli for the Objector

CA Susan

