



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. E1564 OF 2021
IN THE MATTER OF THE ESTATE OF THE LATER ROBERT JOHN SUMBI (DECEASED)

RULING

Before me are two applications. In the first one dated 10th February 2021 by way of Summons under Section 26 of the Law of Succession Act and Petitions for Limited Grant dated 25th February 2021 the Petitioner is seeking limited grant to be allowed to access bank account in Kenya Commercial Bank (KCB) Account No. 11xxxxxxx Mumias Branch in order to withdraw monies held in that account for purposes of paying school fees for the children of the deceased. An affidavit sworn by the Petitioner on 10th February 2021 supports the Petition and Summons. I will deal with this application first.

In the affidavit in support of the application, the applicant deposed that she was granted access to two accounts both at KCB Mumias being account numbers 11xxxxxxx and 12xxxxxxx but she was denied access to the accounts. The reasons are that account number 11xxxxxxx was jointly owned by the deceased and another surviving account holder. Secondly account number 12xxxxxxx did not have sufficient funds to cater for the needs of the children. She now seeks order of this court to access Account number 11xxxxxxx KCB Mumias Branch and withdraw the available funds to the tune of Kshs 154,000. She has specified the needs of the children as follows:

- (i) NN Kshs 17,000
- (ii) LM Kshs 15,000
- (iii) ZM Kshs 52,000
- (iv) SN Kshs 16,000
- (v) Food and maintenance Kshs 50,000
- (vi) Houseboy (Mumias) Kshs 4,000

I note that the Petitioner is changing the pleadings by expanding the same to include money needed for food and maintenance and to pay the houseboy. When this matter came before me the first time I was categorical that the Petitioner ought to file a Petition for full grant. The initial prayers for which the Petition sought urgent intervention by this court were in respect of school fees. Consequently upon granting of the orders to access bank accounts in order to pay school fees, the Petitioner sought to pay rent and this court allowed that prayer. It is now clear to me that additionally, the Petitioner is seeking to access funds to pay for food and maintenance as well as the houseboy. She has not laid basis for the latter two requests. Given that she had not sought orders for payment of the houseboy in her initial petition and that she has not laid the basis upon which she now seeks the same in this application, this court declines to allow the prayer for payment of Kshs 4,000 for the houseboy. The Applicant has not laid the basis for orders to access Kshs 50,000 to pay for food and maintenance. However in the interest of justice and in the best interest of the child, this court will allow her to withdraw Kshs 50,000 for the purpose for which it is sought.

In respect of this application (Petition dated 25th February 2021 and Summons dated 10th February 2021) I allow the Petitioner to access Account No. 12xxxxxxx at KCB Bank Mumias Branch and withdraw funds as follows:

- (i) NN Kshs 17,000

(ii) LM	Kshs 15,000
(iii) ZM	Kshs 52,000
(iv) SN	Kshs 16,000
(v) Food and Maintenance	Kshs 50,000
Total	Kshs 150,000

The second set of pleadings relate to Summons under Section 26 of the Law of Succession Act dated 26th February 2021. It is supported by the affidavit of the Applicant SKN. In the Summons the Applicant states that she is the legal wife of the deceased and that she had applied to access KCB bank which is yet to be effected. She states that the matter is urgent and that in the interest of justice the application should be allowed. In the affidavit in support she avers that she is the legal wife of the deceased and that she was not able to access bank accounts as ordered by the court. She avers that she has young child that require good diet and maintenance and that she needs money to urgently cater for the current needs of the children. She avers that she seeks an order to enable her access the account held by the deceased in Standard Chartered Bank. I have noted that in both the Summons and the affidavit in support it is not specified in which branch of the Standard Chartered Bank this account is held. Further the Account Number is not specified. Neither does the Certificate of Urgency dated 26th February 2021 specify which bank account and the bank branch. In the affidavit in support of the application to access KCB Account number 12xxxxxxx in the schedule of assets in paragraph 15, it is indicated Standard Chartered Account No. 010xxxxxxx. It does not say which branch.

In her submissions in court, Ms Shumilla told the court that the Applicant seeks to withdraw Kshs 100,000 from the Standard Chartered Bank Account No. 010xxxxxxx to meet the needs of the children, for transport and school equipment. Given that the pleadings do not specify this as the account in issue this evidence coming from Ms Shumilla in her submissions is evidence from the bar. This court finds itself in some difficulties because it is not clear which account in the Standard Chartered Bank the Petitioner seeks to access. This court was not given documents to support the ownership of the account number by the deceased. Account No. 010xxxxxxx with Standard Chartered Bank is not even the same account the Applicant had sought to access in the pleadings dated 27th December 2020. Parties are bound by their pleadings. I find that I am not able to grant the application seeking to access Account No. 010xxxxxxx with Standard Chartered Bank because of the reasons I have given above.

In conclusion, the Application dated 10th February and Petition dated 25th February 2021 are hereby allowed to the extent that the Petitioner/Applicant is allowed to access Account No. 11xxxxxxx held at KCB Bank to withdraw Kshs 150,000. The application dated 26th February 2021 is hereby declined. Orders to issue accordingly.

Dated, signed and delivered this 29th day of April 2021.

S. N. MUTUKU

JUDGE