



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Joseph Lithimbi (Deceased) (Succession Cause
41 of 2020) [2021] KEHC 9818 (KLR) (24 May 2021) (Ruling)**

Neutral citation: [2021] KEHC 9818 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 41 OF 2020
JN ONYIEGO, J
MAY 24, 2021**

RULING

1. The deceased herein died intestate October 1, 2019. He was survived by a widow Jane Gathoni Lithimbi and children namely;
 1. Ronnie Githimbi Kithinji (son)
 2. Antony Muriithi Lithimbi (son) 36 years and
 3. Cindy Nyakio Lithimbi (daughter)31 years
2. Several properties were listed as comprising the estate valued at Ksh 20 Million. Liabilities were also indicated as a medical bill totaling to 2,270,389. On August 21, 2020, the widow moved the court for a grant of letters of administration intestate. The same was granted on March 15, 2021 to the petitioner as the sole administrator.
3. Vide a summons of confirmation dated April 23, 2021 and filed on April 26, 2021 under certificate of urgency, the petitioner sought confirmation of the grant before the expiry of six months pursuant to section 71 (3) of the Law of Succession
4. Among the grounds cited on the face of the application and averments contained in the affidavit in support sworn by the petitioner on April 23, 2019 are that; the applicant and her children are in urgent need of money to cater for their living expenses; the applicant needs to pay hospital bills owed to Mombasa hospital to the tune of Ksh 2,270,284 which bill accrued while attending to the deceased before he died; no objection has been filed; there are no other dependants as defined under section 29 of the Law of Succession other than those listed in the petition application and, that she and her children are the only beneficiaries who have agreed on how to share the estate.
5. During the hearing, the petitioner and her children as beneficiaries appeared in court and confirmed that there was no objection challenging the application for confirmation.
6. I have considered the application herein, grounds and averments contained in the affidavit in support together with the annexures thereof.



7. There is no doubt this application has been brought earlier than the six months recommended before confirmation of a grant pursuant to section 71 (1) of the *Law of Succession*. The said statutory period is meant to be sufficient time for anybody wishing to object to the application for confirmation to do so.
8. However, under sub -section 3 of the said provision, a court seized of the matter has discretion to confirm a grant under certain specified circumstances before the expiry of six months. Such grounds and circumstances include: absence of a dependant as defined by section 29 of the *Law of Succession* or that the only dependants are of full age and have consented to the application; that it would be expedient in all the circumstances of the case so do direct.
9. From the chief's introductory letter attached to the petition, it is the petitioner and her 3 children who are the beneficiaries. There are no other dependants. Further, the applicant claimed and indeed proved that there is a large medical bill outstanding against the estate arising out of treatment expenses incurred by the deceased during his lifetime.
10. There is no objection in place nor dependants as defined under section 29 of the *Law of Succession*. In the circumstances of this case, all dependants entitled to the estate have consented to the application for confirmation. Considering the outstanding medical bill due and owing to Mombasa hospital, I am satisfied that there is urgent need to confirm the grant before the expiry of six months to enable the applicant access the deceased's bank account to withdraw cash and settle the debts as well as obtain money to sustain their living expenses.
11. Accordingly, the application is allowed with orders that;
 - (a) the grant herein made and issued on March 15, 2021 is hereby confirmed
 - (b) the estate to be distributed in accordance with the mode of distribution proposed in the affidavit in support of the application.

DATED SIGNED, AND DELIVERED VIRTUALLY AT MOMBASA THIS 24TH DAY OF MAY, 2021

J N ONYIEGO

JUDGE

