



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
MISC SUCCESSION CAUSE NO. E035 OF 2021
IN THE MATTER OF THE ESTATE OF SMM (DECEASED)
AND IN THE MATTER OF BK AND TK (MINOR)

RULING

1. The applicant seeks a special limited grant to enable her to access the deceased's accounts at equity Bank and Cooperative Bank "for purposes of payment of school fees and maintenance for the needs and welfare of the children of the deceased."
2. The sums of Ksh.17,800/- and Ksh.14600/- respectively for the children BK and TK at [Particulars Withheld] High School and [Particulars Withheld] Primary School, and Ksh40,000/- for their upkeep and school related expenses are sought.
3. The Bank balances in the accounts are unknown. The petition does not also disclose whether the estate has other assets available for distribution to the heirs so the size of the estate is unascertainable at this stage.
4. Although the applicant claims to be the wife of the deceased no marriage documents are produced. The Chief's letter dated 12/8/2021 indicates that the applicant is one of the 2 wives of the deceased. Apart from the applicant who is shown as a "widow" and the three children whom she sets out as her children with the deceased, there is another "widow" named JK and a "daughter" PN.
5. Certificates of all the three named children of the applicant with the deceased are attached all indicating the deceased SMM as the father. One of the children GK is adult and the school fees and maintenance is only sought for the two minors.
6. The applicant states that she is a house wife and has no means "to cater for the requisite expenses of our family and I am in desperate need of financial assistance." She states that she brings the petition "in the interests of the children of the deceased."

Determination

7. The court has considered that the interests of the children who were shown by certificates of birth to be children of the deceased and who were said to be out of school for lack of fees, require that a special grant be issued to their mother applicant for purposes of payment of school fees and school related expenses. In view of the special nature of the grant herein, the court will not insist on the grant being made to two persons as in cases regular cases where minors' interests are involved. See s. 58 of the Law of Succession Act.
8. The court also considers that the size of the estate has not been established and there are 2 other beneficiaries – a widow and daughter as shown in the Chief's letter – who are interested in the estate. The authority to access the money in the accounts should be limited to school fees and reasonable school related expenses having regard to the spouses' shared parental responsibility to provide for their children and the third party interest of the co-widow and daughter.
9. In order to preserve the assets of the estate for other beneficiaries, the access granted to the applicant shall be limited to **one** bank account and for the amount presently required for the school fees and maintenance of the minors only. This amount translates to **Ksh.52400** made up of Ksh.17,800/- school fees for BK, Ksh.14,600/- school fees for TK and Ksh.20000 (which the court finds to be reasonable maintenance for the two children). The applicant is at liberty to apply should the bank account balances fail to meet the stated amount.
10. The amount authorised to be withdrawn by the special limited grant shall be taken into account at the point of ascertaining the amount or share of the estate eventually distributed to the applicant and her children.
11. Any further dealing with the estate of the deceased must be with the authority of the court granted in this cause or upon full grant of representation.

ORDERS

12. Accordingly, for the reasons set out above, this Court makes the following orders: -

1. A special limited grant is made to the applicant, JMM for the purposes of accessing the deceased's account at Equity bank A/C NO. [Particulars Withheld] and to withdraw therefrom a total sum of money being **Ksh.52,400/-** for the payment of schools fees respectively for BK at [Particulars Withheld] High School at Ksh.17,800/-; for the payment of school fees for TK at [Particulars Withheld] Primary School at Ksh.14,600/- and for their upkeep and school related expenses at Ksh.20,000/-.

2. The special limited grant does not authorise any other withdrawal of any other sums of money from any other of the deceased's bank accounts or the dealing with any other property of the deceased.

3. Costs in the cause.

Order accordingly.

DATED AND DELIVERED ON THIS 24TH DAY OF SEPTEMBER, 2021.

EDWARD M. MURIITHI

JUDGE

Appearances

M/S Omasa Omosa & Co Advocates for the Petitioner/Applicant