

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO. 9 OF 2019

IN THE MATTER OF THE ESTATE OF THE LATE MOSES CHESONDIN YATOR – DECEASED

SAMUEL KIPKOSGEI YATOR.....1ST PETITIONER/RESPONDENT

ALICE ADHIAMBO YATOR.....2ND PETITIONER/RESPONDENT

VERSUS

ESTHER NANDUTU.....1ST OBJECTOR/RESPONDENT

EDWIN KIPCHUMBA CHESONDI.....2ND OBJECTOR/RESPONDENT

ESTHER NJERI MUNGAI.....3RD OBJECTOR/APPLICANT

RULING

By notice of motion dated 30th July 2021, **Esther Njeri Mungai**, (Applicant) applied to this court for an order that the sum of Kshs 221,650/= being the school fees of Amy Jerop and the sum of Kshs 300,000/= being the college fees of Ness Kiplagat, respectively, be withdrawn from the deceased's Bank Account No. 010033957500 at Standard Chartered Bank, Kitale Branch. The Applicant has further prayed to be provided with the sum of Kshs 350,000/- to enable her maintain the two dependants of the deceased pending the hearing and determination of the succession cause. The application is supported by the annexed affidavit of the Applicant. In the affidavit, the Applicant deposes that she is currently not employed due to the current Covid-19 pandemic situation. She had found it difficult to support the dependants of the deceased especially in regard to their educational needs hence the present application. She pleaded with the court to allow her to withdraw the above sums from the deceased's account pending the hearing and determination of the succession cause.

The Application was not seriously opposed by the Respondents save that they were not persuaded that the Applicant was entitled to be paid maintenance from the estate of the deceased yet the administration of the estate has not yet been mandated by the court. As regards the payment of the school fees, this court will allow the application and order that the sum of Kshs 521,650/- be paid to the Applicant from the deceased's Account No. 0100339571500 at Standard Chartered Bank Ltd, Kitale Branch. This sum is the annual school fees for the two dependants of the deceased. The order is made under **Section 27** of the **Law of Succession Act**.

As for maintenance, this court agrees with the respondents that the same cannot be paid at this stage of the proceedings. In the first place, no grant has been issued to administer the estate of the deceased. To do so, would amount to this court distributing the capital assets of the estate of the deceased contrary to **Section 55(1)** of the **Law of Succession Act** which provides as follows:-

“No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed as provided under Section 71”.

In the premises therefore, any such request for advancement from the capital assets of the estate of the deceased shall await the administration of the estate of the deceased. It is so ordered.

DATED AT KITALE THIS 22ND DAY OF OCTOBER 2021.

L. KIMARU

JUDGE