



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

SUCCESSION CAUSE NO. 2 OF 2017

IN THE MATTER OF THE ESTATE OF JONATHAN KIPRUTO CHEMJOR (DECEASED)

SARAH WANJIKU GITICHI.....OBJECTOR/APPLICANT

VERSUS

TOM KIPTOO CHEMJOR.....1ST RESPONDENT

KENNETH KIBET CHEMJOR.....2ND RESPONDENT

RULING

Background

1. This is a ruling on twinned applications, respectively for confirmation of grant and for the release of certain monies for the upkeep, school and medical expenses for the sole beneficiary of the Estate of the deceased, a school going child of 16 years at the time of the application for confirmation (Date of Birth shown as 8th May 2002).
2. The application for confirmation dated 7th March 2019 is in terms that the assets of the Estate named therein be held upon trust for the child up to her attainment of age 24 years by the two Petitioners/administrators in respect of the assets of two named parcels of land and shares in various companies; and by the two Petitioners, the Protester and the Deputy Registrar, High Court of Kenya at Kabarnet in respect of funds held at Public Trustee, Eldoret.
3. The application dated 7th May 2020 for the release of specified amounts of money was brought subsequent to the hearing of application for confirmation on 3rd March 2020 and while the matter was pending ruling set for 28th April 2020 but affected by the closure of courts in accordance with the Judiciary's Covid-19 containment and management program. The later application was heard by Video Conferencing on 15th May 2020, and the ruling reserved for the 25th May 2020, which falling on *Id Ul Fitr* public holiday was pushed to the following day the 26th May 2020.

Application for confirmation

4. In this matter there were multiple affidavits filed by both sides of the petitioners and the Protester taking wholly divergent positions on several matters as follows:

1. **Affidavit in Support** of the application for Confirmation of Grant dated 7th March 2019 sworn the Petitioners/administrators on 7th March 2019 setting the assets of the estate and the identity of the sole beneficiary thereof.
2. **Replying Affidavit** of the Protester (herein otherwise called Objector) sworn by the Protester on 5th July 2019 primarily contesting *'the proposal for the estate properties to be held upon trust until the subject attains the age of 24 as malicious'* and raising the issues of assets of the estate that were not declared in the schedule of the assets as funds in the sum of 800,000/- allegedly withdrawn from the deceased's Sacco; parcel of **Lembus/Kabimoi/305** measuring 5.63 ha; non-accounted for proceeds of Quarry on parcel of land **BaringoPerkerra-101/1125**; and house put up by the deceased and the protestor on the said parcel and now occupied by the deceased's sister Nancy Jepkemboi Chemjor.
3. **Further Affidavit** of the 2nd petitioner/administrator sworn on 14th October 2019 primarily denying any withdrawal of 'close to ksh.800,000/-' from the deceased's Sacco and indicating that *"the Property Lembus/Kabimoi/305 was owned by our father and no*

distribution had been carried out” and that the Quarry in BaringoPerkerra-101/1125 “stopped running and was closed; it only operated for a few months after the deceased died.”

4. Further Affidavit of the Protester, sworn on 22nd November 2019 in response to the 2nd Petitioner’s affidavit of 14th November 2019, attaching a copy of confirmed grant in Nairobi Succession Cause 1626 of 1993, re. **Japheth Kipkori Chemnjor (Deceased)** where the two parcels of land and plots for commercial /private use belonging to the Deceased’s father are shown to have been distributed to the beneficiaries including the deceased herein who received 7.869 ha out of parcel **Koibatek/Perkerra101/197**; 0.101 ha of plots for commercial/private use and 5.63ha of parcel **Lembus/Kabimoi/155**. The affidavit charged that, on the evidence, the “the respondents have been out to unlawfully intermeddle with the estate of the deceased” herein and urged the “court to order that the property of the deceased be held in trust by the Deputy Registrar of the Court in trust for the beneficiary and thereafter it be transferred to the beneficiary upon attaining the age of majority”.

5. Further Affidavit of the 1st Petitioner principally asserting that the property Lembus/ Kabimoi/305 was the deceased’s 1/3 share of the their deceased father’s parcel of land Lembus/Kabimoi/155 and which to their knowledge the deceased had “sold his share of the said property pending subdivision”; charging that the protester had fraudulently obtained a second original certificate of death of the deceased, a second birth certificate on the child herein and a letter from the area Chief dated 4/10/2016 vouching for her marriage to the deceased; calling for a paternity testing of the child to confirm her as a child of the deceased herein; and urging that the monies held at the Public Trustee were proceeds on an insurance policy held by the deceased in which he had nominated his uncle Syllas K Chemnjor as the next of Kin and the money should ultimately go to the person nominated.

6. Further Affidavit of the 2nd Petitioner sworn on 2nd December 2019 principally denying that he had sold the property **Lembus/Kabimoi/305** and asserting that the same had been sold by the deceased during his life to one David Kipngeno and that the protester had not tendered evidence that he or the 1st petitioner had sold the property.

7. Further Affidavit of the protester sworn on 6th December 2019 in response to the two affidavits of the petitioners sworn on 2nd December 2019, and denying any fraudulent dealing in the processing of a birth certificate for the child which she states was done procedurally with the ‘knowledge and advise from the 1st petitioner’; the issuance of the Chief’s letter and that the named Syllas K. Chemnjor had any interest in the funds deposited at the Public Trustee having been “the one who informed me about the money that is now held by the public trustee and the NSSF money which was given to me by NSSF for the benefit of the minor.” She dismissed the request by the 1st petitioner for paternity test on the child as ‘an afterthought meant to frustrate the minor.’

5. The petitioners and the Protestor are agreed on, as forming part of the estate of the deceased, the following assets set out in the application for confirmation:

1. Parcel of land BarinogPerkerra-101/1121

2. Parcel of land BarinogPerkerra-101/1125

3. Shares

a. KCB Shares

b. Safaricom Shares

c. Kenya airways Shares

d. Baringo United Shares

4. KVDA Benefits held by the Public Trustee at Eldoret.

6. The application for confirmation indicates the child “**Ruth Kipruto alias Ruth Jerono Kipruto – Daughter (minor)**” as the sole beneficiary of the deceased. As shown below, the 1st petitioner has by a further affidavit purported to open the issue by calling for a paternity test on the child.

Disputes facts

7. Although, there had hitherto been no dispute raised as to the identity of the beneficiary, the Further Affidavit of the 1st Petitioner sworn on 2nd December 2019 (in response to the Protester’s further affidavit of 22nd November 2019) has sought that the paternity of the child who is shown as the sole beneficiary in the application and supporting affidavit to the application for Confirmation of grant. There is, moreover, a clear dispute as to the assets of the estate and therefore the shares to be inherited by the beneficiary cannot be determined without determination as to the size and nature of the estate.

8. The disputed facts relating to the size and nature of the estate are as follows:

1. Whether the property **Lembus/Kabimoi/305** registered in the name of the deceased is part of his estate or it was sold by him *inter vivos* to one David Chemnjor Kipng’eno.

2. Whether the property known as **BaringoPerkerra101/1125** generated income by way of Quarry operations for which the administrators should account to the estate for distribution to the beneficiary.
3. Whether the petitioners or any other person withdrew Ksh.800,000/- from the deceased's Sacco, and whether, therefore, there should be any account therefor.
4. Whether the house on **BaringoPerkerra 101/1125** occupied by the deceased's sister is part of the estate of the deceased.
5. Whether the money lodged with the Public Trustee by the Deceased's employer KVDA is part of the Estate of the Deceased or retirement benefits to be disposed according to legal provision on payment by the nomination of next of kin.

9. The dispute as to whether the money at the Public Trustee is part of the estate, while largely a matter of construction of law depends on the **fact** as to the nature of the funds. The Petitioner contends in their affidavits that the money was insurance policy monies for which the deceased had named his uncle as the next of kin.

10. The paternity of the child, hitherto accepted and shown as the sole beneficiary in the application for confirmation and joint affidavit of the Petitioners in support thereof, is raised in the further affidavit of the 1st Petitioner sworn on 2nd December 2019 in which he seeks a paternity test on the child. However, in view of the pending application for confirmation which was filed on the basis that the child herein is the sole beneficiary such a call for paternity test must be moved by a formal application as the petitioner may be advised by his legal advisors.

Mandate of the confirmation court

11. The substantive statutory authority to confirm grants of representation is set out in section 71 of the Law of Succession Act and there is power, in appropriate circumstances, for the **postponement** of confirmation of grants follows:

“71. Confirmation of grants

(1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.

(2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may—

(a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or

(b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 of this Act, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered; or

(c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or

(d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, **in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled;** and when confirmed such grant shall specify all such persons and their respective shares.

12. The procedure for determination of an application for confirmation in the Probate and Administration (P & A) Rules requires hearing of the application for confirmation of grant as set out in Rule 41 of the Probate and Administration Rules, 1980:

“41. Hearing of application for confirmation

(1) At the hearing of the application for confirmation the court shall first read out in the language or respective languages in which they appear the application, the grant, the affidavits and any written protests which have been filed and **shall then hear the applicant and each protester and any other person interested, whether such persons appear personally or by advocate or by a representative.**

(2) The court may either confirm the grant **or refer it back for further consideration by the applicant or adjourn the hearing for further evidence to be adduced or make any other order necessary for satisfying itself as to the expediency of confirming the applicant as the holder of the grant or concerning the identities, shares and interests of the persons beneficially entitled and any other issue which has arisen including the interpretation of any will.**

(3) Where a question arises as to the identity, share or **estate** of any person claiming to be beneficially interested in, or of

any condition or qualification attaching to, such share or **estate** which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, **by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to section 71(2) of the Act, proceed to confirm the grant.**

(4) In proceedings under subrule (3), unless the court otherwise directs, the personal representative of the deceased shall be the applicant seeking determination of the question, and the person claiming so to be beneficially interested together with the residuary legatee or other person to be appointed by the court to represent the residuary estate shall be the respondents; and the court in such proceedings shall give all necessary directions relative to the prosecution thereof including the safeguarding of the share or estate so appropriated and set aside and the provision of costs.

(5) Where the court in exercise of its power under section 71(2)(a) of the Act directs that a grant be confirmed it shall cause a certificate of such confirmation in Form 54 to be affixed to the grant together with the seal of the court and shall appoint a date not more than six months ahead, by which time the accounts of the completed administration shall be produced to the court for its approval.

(6) Where the court, in exercise of its power under section 71(2)(b) of the Act, instead of confirming a grant already issued directs the issue of a confirmed grant, this grant may be in Form 55.

(7) On production of the accounts in court any person beneficially entitled and any creditor may appear and be heard before the court's approval is given.

(8) The approval of the accounts in court may be dispensed with if all persons beneficially entitled have signed as consenting to the accounts as produced.

(9) On the date for approval of the accounts and on any adjourned date application may be made for an adjournment to a fixed date not longer than three months away."

Determination of assets of the Estate

13. This being an intestate succession, the court is, pursuant to the Proviso in section 71 (1) (d) of the Law of Succession Act (set out above), required under the parameters for the confirmation of grant in case of intestacy to be satisfied "**as to the respective identities and shares of all persons beneficially entitled**" and if not so satisfied, the court is empowered to "**postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case**".

14. In view of the disputed facts herein whose resolution is not possible by affidavits there is need, in accordance with Rule 41 of the Probate and Administration Rules to "**hear the applicant and each protester and any other person interested, whether such persons appear personally or by advocate or by a representative**". The court shall, accordingly, invoke the power under section 71 (1) (d) of the Law of Succession Act to postpone the confirmation of grant until the resolution of the disputed facts which impact on the nature, size and share of estate of the deceased person that shall be distributed to the beneficiary. Indeed, Counsel for the petitioners hinted at such a hearing with respect to the Public trustee funds when he submitted that the court, now being seized of the matter, may call for information from the Public Trustee as to the nature of the funds which they sent to the Public Trustee upon the death of the deceased.

15. The court considers that because of the diametrical positions taken by the parties on the matter of the assets of the deceased, there is need for determination of fact by a method of fact finding other than by affidavit evidence, so that the truth of the disputed matters may be ascertained by cross-examination of the deponents of the said affidavits and or other witnesses as the parties may wish to bring forward on the relevant disputed factual issues arising from the application for confirmation grant dated 7th March 2019, in accordance with section 71 (1) (d) of the Law of Succession Act and Rule 41 (1) and (2) of the Probate and Administration Rules. The Court considers it prudent pursuant to Rule 41(2) of the P&A Rules to "**adjourn the hearing for further evidence to be adduced...[which is] necessary for satisfying itself as to ... the shares and interests of the persons beneficially entitled...**"

16. Questions of discrimination, the consideration of the impact of the Rights of the Child and parental rights under the Children Act to deal with the property of a child as urged by the Counsel for the Protester in her submissions dated 20th January 2020 in opposition to the method of distribution of the estate, will fall to be considered at the time of confirmation of the grant for distribution of the estate as ascertained after the taking of further evidence as directed herein.

Application for Release of Funds held by Public Trustee

17. The Protestor has moved the court in the application by Summons dated 7th May 2020 for the release of funds as follows:

1. Sum of Ksh.40,000/- of funds held by the Public Trustee at Eldoret be released to the applicant for maintenance of the subject and facilitation of e-learning.

2. Sum of Ksh.25,000/- be released to Mediheal Hospital, Nakuru to cater for the operation of the subject.

18. The application was supported on the grounds set out in the application as follows:

1. Schools closed for longer due to Covid-19 virus and the sum suggested would be reasonable as the subject is spending more time

reading and learning on line which is an extra and expensive cost.

2. The subject needs to undergo an urgent operation as she is in pain and is a candidate.

The applicant filed a supporting affidavit sworn on the same date of the application.

19. The application was opposed by a replying Affidavit by the 2nd respondents reiterating the petitioners submissions that the funds are subject of the retirement Benefits (Individual Retirement Benefit Schemes) Regulations 2000 and in any event not part of the estate by virtue of the definition of 'free property' under section 3 (1) of the law of Succession Act.

20. The petitioner's counsel objected to the release of the funds on the submission previously made in his written submissions as to the nature of the funds held at the Public Trustee urging that the same is not part of the estate not being **free property** within section 3(1) of the Law of Succession Act, citing **Christopher Ndaru Kagina v. Esther Mbandi Kagina & Anor.** [2016] eKLR (Mativo, J.), and is payable to the nominated next of kin pursuant to **Retirement Benefits (Individual Retirement Benefits Schemes) Regulations 2000.** Counsel further relied for the proposition that funds under Pensions or retirement benefits schemes and life insurance policies as funds subject of a nomination do not form part of the estate of the nominator, on the case law authorities of **G.A.A.M & Another v. M.O.A.O.** (2016) eKLR (Mwita, J.) and **In re Estate of Carolyne Achieng Wagah (Deceased)** (2015) eKLR (Musyoka, J.), which I have respectfully noted. Counsel further urged that the surgical operation on the subject had been shown to be urgent such as could not wait for the funds to be available by distribution of the estate property such as shares in the various companies.

21. The petitioner's counsel therefore opposed the application for release of the money urging that the money in the Public Trustee fund is not part of the Estate of the Deceased having been part of his **retirement benefits** which by virtue of the section 19 of the **Retirement Benefits (Individual retirement Benefits Schemes) Regulations, 2000** made under section 55 of the **Retirement Benefits Act, No. 5 of 1997** ought to be paid to the person nominated in this case alleged to be Sylas Chemnjor. It was further pointed out that the condition the surgical operation for which it is proposed to spend money is requested is not urgent and may await availability of funds by the sale of the company shares allocated to the benefit of the child heir.

22. For the protester, on the other hand, it was urged that the funds at the Public Trustee were not benefits subject of the Retirement Benefits Act as there was nothing to show that they were indeed retirement benefits of the Deceased. In her written Submissions dated 20th January 2020, Counsel for the Protester urged that Group Policy funds and that the court had discretion to make orders on property vested in Public trustee as follows:

"It is my humble submission that the monies held by the Public trustee are not Retirement Benefits but Group Policy funds as properly stated by the 1st Petitioner in Paragraph 22 of his affidavit sworn on 22nd December 2019. Section 5G of the Public Trustee (Amendment) Act No. 6 of 2018 states that **the Public Trustee may receive payments of compensation under the Work Injury Benefits Act, Pensions Act, Civil Servants Group Accident Insurance Scheme and any other payment arising from compensation as a result of an accident and administer the funds as prescribed.** Under the Public Trustee these are payments made to the dependants of a deceased person. Therefore Sylas Chemnjor mentioned by the petitioner in that paragraph is not a dependant under the Law of Succession. He may have been properly so advised and that is why he has not pursued these monies at all.

Part IV section 23 of the Public Trustee Act states that the court may make such orders as it thinks fit in respect of property vested in the Public Trustee or the interest or produce thereof. It is our submission that the money held by the Public trustee to continue benefitting the minor until she attains the age of 18 when it can be released to her."

23. The Counsel for the petitioners retorted asking the court to establish from the Public Trustee the true nature of the funds. In a letter dated 3rd July 2017 to counsel for the petitioner, KVDA advised that the Authority had "*commenced transfer of funds which are **the benefits** of the late Jonathan Chemnjor to the Public Trustee.*" In his further affidavit of 2nd December 2019, the 1st petitioner stated that the KVDA funds "*are proceeds from an insurance policy our late brother held with his former employer KVDA in which neither the protester nor her child Ruth Jerono are named next of kin.*"

24. The Court considers that further evidence as to the nature of the funds lodged by the deceased's employer KVDA with the Public Trustee is necessary as to the nature of the funds in determination whether the monies are part of the estate or retirement benefits subject to the application of the rule on nomination of next of kin. And having postponed the application for confirmation of grant under section 71(1) (d) of the Law of Succession Act, the determination of the issue of the nature of the KVDA funds and, consequently, whether they form part of the estate or otherwise, is similarly postponed.

25. In the meantime however, the question of the money for the daily upkeep, education and medical expense as prayed in the Protester's application remains, and there is need for the court to make some reasonable provision. While funding may be obtained from the Estate assets of the immovable property and company shares, their non-liquid nature would not allow expedited disposal to respond to any urgent situation.

26. The court takes judicial notice of the situation created by the measures taken by the Government for the containment of **Corona Virus Disease 2019 (Covid-19)** leading to closure of regular schools and adoption of e-learning whose costs are some of the expense claimed by the Protester. As regards the surgical operation, the court would rather err on the side of caution to make provision for the health of the child, in her best interests. However, save for the funds held at the Public Trustee, the determination as part of the estate of which is yet to be made, the remainder of the property subject of this succession dispute are non-liquid being immovable property, company shares and unascertained proceeds of Quarry for which account has not been given.

27. In these circumstances, while the court appreciates the respective contentions of the parties as regards the funds held by public trustee at Eldoret, the court shall in the interests of justice consistent with section 47 of the Law of Succession Act and rule 73 of the Probate and Administration Rules, (urged by the Counsel for the Petitioners in a different context), make an order for the release of such sums as it finds reasonable having regard to the size of the Fund, the immediate requirements for upkeep, education and medical needs of the child and the need to preserve an inheritance for the child in the future.

28. I consider that the principle of necessity is implied in all law. In this case, it is necessary to have money availed for the maintenance, education and medical needs of the child; such funds must, of necessity, be sourced from presently available liquid assets, even though such assets though claimed so to be, have not finally been determined to be part of the estate, but subject to return when the funds become available from other sources of the estate upon determination of the extent and distribution of the estate.

29. As the court does not have the updated information as to the size of the funds still remaining in the Public Trustee account and in the interest of preservation of the funds for future educational and upkeep needs of the child should these funds be adjudged to the estate, I would approve the sum of **Ksh.30,000/-** for maintenance of the child during the current school holiday and the money required for surgical operation at the cost sum of **Ksh.25,000/-**. An order for expedited hearing of the matter shall quickly put to an end this dispute once and for all.

Reimbursement of Funds

30. Should the court, after hearing, adjudge the funds to the benefit of the next of kin as allegedly nominated by the Deceased, then such monies as shall in the meantime have been expended from the Fund shall be reimbursed from the assets of the Estate of the Deceased and paid to the named next of kin or to his order. In order to secure the eventuality of the reimbursement of the funds, the **undisputed** estate assets should be preserved **undistributed** for the purposes of such reimbursement, should it become necessary upon the final determination of the succession proceedings.

31. This course of action does appear to agree with the 1st Petitioner's own contemplation of such reimbursement when he deponed at paragraphs 22 - 24 of his **Further Affidavit of 2nd December 2019** as follows:

“22. THAT the named next of kin on record at KVDA for our late brother's **insurance policy** is his uncle Sylas K. Chemnjor and not the protester nor the minor Ruth Jerono.

23. THAT this Honourable Court has full knowledge regarding these monies held at the Public Trustee are proceeds from an **insurance policy** our late brother held with this former employer KVDA in which neither the protestor nor her child Ruth Jerono are named next of kin.

24. THAT such insurance funds shall ultimately be returned to named next of kin hence need for prudent use; numerous requests from the protestor for relates of amounts above the court directed annual maximum for upkeep is a clear indication that they have no regard for prudent utilization that would ensure the minor has monies left over for the post secondary education without resorting to liquidating assets belonging to our late brother.”

32. Indeed, by analogy, the import of the provision of section 42 of the Law of Succession Act is that a benefit that a beneficiary has taken before distribution of an estate shall be taken into account in the final distribution thereof as follows:

“**42. Previous benefits to be brought into account**

Where—

a. an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

b. property has been appointed or awarded to any child or grandchild under the provisions of [section 26](#) or [section 35](#) of this Act, *that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.*”

33. For this reason, the **undisputed** assets of the deceased shall not be distributed pending the said determination as to the assets of the Estate, and there shall be an order for the maintenance of the **status quo** as regards the assets of the estate listed in the application for confirmation, subject to any orders of the court herein.

34. The court considers that the postponement of the confirmation, in accordance with the power of the court in terms of section 71 (1) (d) of the Law of Succession Act, to “(d) *postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case*” is to be preferred to the **partial** confirmation of the **undisputed** estate, while setting apart for consideration of the **disputed** assets, as is authorized by Rule 41 (3) of the P & A Rules as follows:

“(3) Where a question arises as to the identity, share or **estate** of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or **estate** which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, **by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to section 71(2) of the Act,**

proceed to confirm the grant.”

35. The application for confirmation of Grant herein dated 7th March 2019 is postponed upon terms as set out below.

Orders

36. Accordingly, for the reasons set out above, the court makes the following orders:

Application for Confirmation

1. The court makes an order pursuant to section 71 (d) of the Law of Successions Act and Rule 41 (1) and (2) of the Probate and Administration Rules for the postponement of the application for confirmation herein dated 7th March 2019 so that the parties may adduce further evidence by *viva voce* evidence subject to cross-examination to enable the court to determine the assets of the estate of the deceased and, thereby, the shares of the estate to be distributed to the beneficiary of the Estate.

2. The person named *David Chemnjor Kipng'eno* who is alleged by the petitioners to have acquired an interest in the deceased's property in Parcel *Lembus/Kabimoi/305* shall be at liberty, as a person interested within the meaning of Rule 41 (2) of the Probate and Administration Rules, to be heard, if he so desires, on his acquisition of the said interest, and for that purpose, the Petitioners shall serve the application for confirmation on the said *David Chemnjor Kipng'eno*.

Application for release specified sum of money

3. The court grants an order for the payment on account out of the funds held by the Public Trustee, Eldoret of –

i. the sum of **Ksh.30,000/-** to the protester for the upkeep, e-learning and other needs of the child the subject of these proceedings during the period of school closure/holiday following the Covid-2019 Government Containment program; and

ii. the sum of **Ksh.25,000/-** directly to M/S Mediheal Hospital, Nakuru on account for surgical operation and related medical care, as necessary, of the child subject of this proceeding in the Succession Cause.

4. In all other respects, the status quo in the deceased's estate existing as at the date of this ruling shall be maintained until further order of the court.

37. The hearing of the evidence on the application for confirmation of Grant herein shall be taken on such dates to be fixed by the court at the Registry in consultation with the parties.

Order accordingly.

DATED AND DELIVERED THIS 26TH DAY OF MAY, 2020.

EDWARD MURIITHI

JUDGE

Appearances

M/S Mutonyi, Mbiyu & Co. Advocates for the Petitioners/Administrators.

M/S G.C Nyongesa & Co. Advocates for the Protester (Objector)a