



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 460 OF 2019**  
**IN THE MATTER OF THE ESTATE OF EVANS ARAKA MORURI (DECEASED)**

**MORURI OPENDA.....1<sup>ST</sup> PETITIONER**

**WILKISTER BINSARI NYANDIGO.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**REBECCA KEMUNTO OTIENDE.....OBJECTOR**

**RULING**

1. The deceased Evans Araka Moruri died intestate on 6<sup>th</sup> October 2016 in Mandera. He was working for Islamic Relief Kenya as a Micro Finance Officer. There is no dispute that the petitioners MO and W BN were his father and mother, respectively. He had a wife but they had separated and she had moved on. The marriage was blessed with three children:- LO A, AMA and CB. They are all minors.
2. The petitioners filed this petition on 16<sup>th</sup> April 2019 and on 12<sup>th</sup> July 2019 obtained a grant of letters of administration intestate. The estate of the deceased comprises Pension Benefit worth Kshs.284,000/=, Group Life Benefit worth Kshs.3,960,000/=, WIBA Benefit Trust Kshs.6,600,000/=, last expense worth Kshs.250,000/= and one year salary from the employer worth Kshs.1,388,000/=.
3. On 29<sup>th</sup> August 2019 Rebecca Kemunto Otiende (the objector) filed an application under **section 76** of the **Law of Succession Act (Cap 160)** and **rules 44** and **73** of the **Probate and Administration Rules** seeking to revoke the grant. Her case was that she was married to the deceased at that time of his death and that they had two children JM and FO (both minors) a fact that was known to the petitioners but which they did not disclose to the court. She stated that the petitioners were not beneficiaries of the estate of the deceased, and were not entitled to the grant. The petitioners responded that the deceased was not married to the objector and had no child with her. According to them the deceased was formally married to another man whose particulars they gave. The application is pending.
4. The present application is dated 9<sup>th</sup> June 2020 by the petitioners who seek interim provision for the children for their school fees and for their upkeep. They seek Kshs.300,000/= for upkeep and Kshs.132,000/= for school fees arrears for 2019 and school fees for 2020. The three children go to school at [particulars withheld] Academy. They ask that if this provision cannot be given, the application for revocation be expedited. The objector opposed the application stating that the deceased's former employer had been paying the children's fees. Secondly schools are now closed (owing to Covid-19) and therefore no fees was payable. She stated that the request for Kshs.300,000/= had not been particularised. She asked that the application should not be granted in view of the fact that she had questioned the grant issued to the petitioners.
5. Given that the estate has minors who require upkeep and education, I direct that the parties do take steps to have the application for revocation heard expeditiously. On 21<sup>st</sup> September 2020 the court will give directions on the hearing of the application.
6. It is not in dispute that LOA, AMA and CB are the minor children of the deceased. The petitioners presently have a grant and are entitled to take care of them. The school may be closed but they are entitled to be fed, housed, clothed and taken to hospital when there is need. I also consider that the petitioners, as administrators, have a duty to account to the court and to all beneficiaries for how they spent any money in the estate of the deceased.

7. Whether or not the objector and the two children are beneficiaries of the estate of the deceased will be determined during the hearing and resolution of the application for revocation.

8. Lastly, I bear in mind that any money given to the three children, whose position as beneficiaries is not in question, shall be taken into consideration when the estate of the deceased is finally distributed.

9. That being the case, I direct that Kshs.300,000/= does issue to the petitioners from the deceased's one year salary held by Islamic Relief Kenya. The money shall be deposited into the petitioners' joint account No. [xxxx] at Equity Bank. The money shall exclusively be for the upkeep of the three children LOA, AMA and CB.

10. This was a family dispute. Each side shall bear own costs.

**DATED and DELIVERED at NAIROBI this 21<sup>ST</sup> SEPTEMBER 2020.**

**A.O. MUCHELULE**

**JUDGE**