



REPUBLIC OF KENYA

IN THE HGIH COURT OF KENYA AT KAKAMEGA

FAMILY DIVISION

SUCCESSION CAUSE NO. 476 OF 2011

IN THE MATTER OF THE ESTATE OF THE LATE COLLETA KHANYELELI AMEGA – DECEASED

AND

ROSEMARY VUHYA.....PETITIONER

VERSUS

MAURICE KIKAYA.....1ST OBJECTOR

EMMANUEL SERETO.....2ND OBJECTOR

AND

MARGARET MMBOGA.....1ST INTERESTED PARTY

HARRISON MUHAMBE.....2ND INTERESTED PARTY

RULING

The Application

1. The application coming up for determination in the summons dated 27.04.2018, brought under Section 26,27,28 and 29(a) of law of Succession Act. The application prays for an order that the petitioner herein Rosemary Amega Vuhiya be granted leave to access the sum of Kshs.500,000/= from the account of the deceased herein Golletta Kanyechi Amega. The deceased's' account is held at Mudete Tea Factory. She applicant avers that the funds are required for payment of tuition fees of the dependants of the deceased.

2. The application is premised on grounds set out on its face, with details of the students for whom the tuition fees will be paid. The students as per the documents filed are Stephen Mung'asia Muhambe, a student at The Animal Health and Industrial Training Industry in Ndimba Kirinyaga County, Justus Jumba of Kenya Institute of Highways building technology Nairobi, Hellen Lugatsiva of Gladys Girls High School in Nairobi Gilbert Amega of ABC Maiani Boys High School in Ukambai, Gillian Vigedi of Moi Agr. Base, primary School in Nairobi and Redempta Linda Muhinja of Dedan Kimathi University. The student also swore an affidavit of even date in support of the application.

Response to the application

3. There is no response to the application despite the application having been duly served on the 1st Objector, the second Objector was represented by Counsel when the matter was in court on 09.05.2018. On that day the application was fixed for hearing on 28.5.2018. Neither objector was present in court when the matter came up for hearing on 28.5.2018.

Submissions

4. Miss Oduor of K.N. Wesutsa & CO. Advocates canvassed the application before me on 28.05.2018 and urged the court to grant the orders as prayed. At paragraph 10 of the applicant's supporting affidavit, The applicant depones, "that an approximate sum of kshs.500,000/= would be sufficient to cover the education expenses of the grandchildren and the liabilities the estate owes to 3rd parties for the next 1 years." She proceeds to state at paragraph 11 of the affidavit that " The funds accumulated in the account of the deceased with the Mudete Tea Factory since her demise has sufficient funds necessary to accommodate the amount of Ksh.500,000/= required. The applicant did not

however avail a statement of account to confirm whether and how much money is in the deceased's account at Mudete Tea Factory.

Determination

5. Apart from the summons coming up for determination today, I have also read the entire file and note that there is a protest that is yet to be determined. Directions were taken on 14.3.2016 to the effect that the protest would proceed by way of oral evidence. That is yet to be done.

6. In light of the above, it is the considered view of this court that the present summons is premature and if the same were to be granted, it would prejudice the interests of other parties in this matter. Accordingly, the application is dismissed but with no orders as to costs. Parties are directed to take dates at the registry for the hearing of the protest. The petitioner should take the lead in this regard since the protestors do not appear to be in a hurry.

Orders accordingly

Ruling delivered, dated and signed in open court at Kakamega this 29th day of May, 2018

RUTH N. SITATI

JUDGE

In the presence of:-

Miss Oduor.....for Petitioner/Applicant

In person - absent.....for 1st Objector

M/s Anambo (absent).....for 2nd objector

Polycap.....court Assistant