



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**SUCCESSION CAUSE NO. 539 OF 2009**

**PUBLIC TRUSTEE ADMINISTRATION CAUSE NO. 459 OF 2010**

**IN THE MATTER OF THE ESTATE OF MICHAEL CHERUIYOT KOGO (DECEASED)**

**RUTH MUMBI NDAMBU.....APPLICANT**

**VERSUS**

**PUBLIC TRUSTEE.....RESPONDENT**

**RULING**

1. The Applicant and the Respondent are administrators of the estate of the deceased. The Applicant filed summons dated 22<sup>nd</sup> June, 2018 essentially seeking orders that:

***i. This court be pleased to order the Respondent to continue remitting funds administered by the Respondent on behalf of the estate of the deceased towards payment of school fees of Stephanie Nepeita Cheruiyot ('Minor') at Mugoiri Girls' High School.***

***ii. This court be pleased to order the Respondent to give an account of the trust the Respondent administers in favour of the estate of the deceased.***

2. The summons is supported by the Applicant's affidavit and the grounds on the body of the summons. She alleged that the minor has been receiving financial proceeds from a trust of the estate of the deceased to facilitate payment of her school fees until recently when the Respondent refused to facilitate payment of school fees of the minor from the trust. That the Respondent has so refused on the basis that the grant has taken too long to be confirmed. She contended that the said delay is not inordinate or deliberate but rather the same is occasioned by the matter failing to proceed for hearing due to reasons beyond her control. That when the matter came up for hearing on 14<sup>th</sup> April, 2018 the matter did not proceed since the court was not sitting. She lamented that due to the failure to remit the fees, the minor's school fees arrears now stood at Kshs. 49,500/- for first and second term. She stated that she is an employee of Kenya Prisons with meagre salary and unable to afford the minor's fees. She urged that the Respondent stands to suffer no prejudice if the orders sought are awarded.

3. Dorcas A. Nyalwidhe, the Deputy Public Trustee filed a replying affidavit on 13<sup>th</sup> July, 2018. She contended that the Respondent received money due to the deceased's estate from the Ministry of Finance being payment of gratuity amounting to KShs. 413,208/-. The Applicant then filed a report of the death to the Respondent under oath on 28<sup>th</sup> June, 2010. That the Applicant consented to the Respondent administering the estate by signing consents to making of grant of letters of administration dated 9<sup>th</sup> January, 2012. She contended that the Respondent is under law permitted to make advances for purposes of any trust or estate in the course of administration, or about to be administered, by him, out of any moneys which may be placed at his disposal by the Minister of Finance and upon such terms as he may think proper. That the Respondent has been advancing payment to the beneficiary from the deceased estate upon request made by the Applicant. That the Applicant later disclosed to the Respondent that she had taken letters of administration and that upon appointment of an administrator of the deceased estate, the Respondent has no locus to pay out any money and to act otherwise would amount to intermeddling with the deceased. It was contended that the Applicant was advised to serve the Respondent with necessary documentation including but not limited to grant letters of administration that would facilitate handing over of the estate to the administrators appointed by court as required by law. In an effort to avoid delay, the Respondent has on several occasions invited the Applicant to the office to discuss the way forward with regard to the administration of the deceased estate but the Applicant has not to date served the Respondent with the grant of letters of administration. She contended that it is imperative that the Applicant complies with the necessary procedural requirements consequent to administration of estates which entails obtaining letters of administration to facilitate handing over of the estate according to law. That it is evident from the foregoing that the Respondent's decision not to advance further payment is within the law.

4. One of the administrators Grace Nepita appeared in person and indicated that she was in agreement with her co-administrators Application dated 22/06/2018 as long as it was for the best interest of the minor in issue.

5. I have also noted from the record that the grant issued on the 19/01/2009 was revoked by this court on the 10/07/2015 pursuant to the failure by the administrators to file for confirmation of grant. The record also reveals that the Applicant herein sought to reinstate the cause vide her Application dated 6/11/2017 which is yet to be prosecuted. It would therefore appear that the Applicant has met some setbacks in her quest to have the grant confirmed and thereafter present the same to the Public Trustee/Respondent as demanded of her. The Applicant appears to be in a quagmire since the minor's school fees ought to be paid while at the same time she is to furnish the confirmed Grant to the Public Trustee. In the dust of this confusion, I find the minor's interests are likely to be prejudiced if the school fees are not paid. Since the Respondent had been paying the said fees, I find it is fair and just to direct the Respondent to pay the said fees while this court will order the Applicant to proceed and secure the requisite grant within the shortest time possible.

6. Even though the Respondent had acted within the law not to further handle the affairs of the estate of the deceased on the failure of the Applicant to take out letters of grant of administration, I find the Applicant's delay was due to factors beyond her control. The Applicants delay should be excused in the circumstances in the interest of the minor.

7. In the result, the Applicant's Application dated 22/06/2018 is allowed as prayed. The Applicant is hereby directed to set down her Application dated 6/11/2017 for hearing within the next thirty (30) days from the date thereof.

It so ordered.

Dated and delivered at Machakos this 15<sup>th</sup> day of **August, 2018**.

**D.K. KEMEI**

**JUDGE**

**In the presence of:-**

Mugure for the Administrator/Applicant

Nyabochoa - for the Respondent

Josephine - Court Assistant