

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

SUCCESSION CAUSE NO. 6 OF 2018

IN THE MATTER OF THE ESTATE OF PATRICK MUTISYA MUNYITHYA (DECEASED)

NWM)

IMM).....APPLICANTS/PETITIONERS

R U L I N G

1. On the 25th day of **September, 2018**, **NWM** and **IM**, the wife and son of **PMM**, (Deceased), respectively petitioned for a special grant of letters of administration limited to payment of a hospital bill in the sum of **Kshs. 1,031,964/=**, school fees for **IM** in the sum of **Kshs. 65,500/=**, **SKM** in the sum of **Kshs. 44,500/=**, three months' rent in the sum of **Kshs. 40,000/=** per month and a client's money **USD 27,032.39**.

2. The application is supported by an affidavit deposed jointly by both Applicants where they aver that the aforesaid payments are urgent and cannot wait for issuance of a certificate of grant and there is money held in the Co-operative Bank of Kenya **Account No.[particulars withheld]**, **JKIA Branch**.

3. I have considered the application. It is indicated that the Deceased who died on the 4th day of **July, 2018** was survived by the Applicants herein and a daughter **SKM** aged **twelve (12) years old**. It was demonstrated by way of documentary evidence that the 2nd Applicant is a student at **Mount Kenya University, Thika Campus**. His admission number being **[particulars withheld]**. His Tuition and Accommodation Fees for the semester is **Kshs. 65,550/=**; **S** is a pupil at **[particulars withheld] Primary School** where **Kshs. 44,500/=** is required; the rent is outstanding for three (3) months while a hospital bill of **Kshs. 1,031,964/=** is still pending at **[particulars withheld] Community Hospital**.

4. It is within my knowledge that no grant of representation, a limited grant inclusive confers power to distribute the capital assets of the Deceased until confirmation of the grant (**See Section 55 of the Law of Succession Act (Act)**). However, circumstances set out herein are special and must be addressed, therefore, I am compelled to act pursuant to **Section 54** of the **Act** which provides thus:

“A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.”

5. I have been asked to grant order paying the debt of a creditor, this must await confirmation of the grant for subject to proof it is a liability of the Estate of the Deceased.

6. In the premises I grant orders thus:

· a special grant of letters of administration in respect of the Estate of the Deceased shall issue to the Applicants limited to withdrawal of a sum of **Kshs. 1,300,000/=** from **Account No. [particulars withheld] Co-operative Bank, JKIA Branch** which shall be expended on school fees for the two (2) children of the Deceased, rent and the hospital bill.

7. It is so ordered.

Dated, Signed and Delivered at Kitui this 28th day of November, 2018.

L. N. MUTENDE

JUDGE