



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO.1 OF 2017

IN THE MATTER OF THE ESTATE OF STEPHEN MUSEMBI NZUVE(DECEASED)

ROSE NZIOKI MUSEMBIAPPLICANT

VERSUS

JOHN BOSCO MUTISYA NZUVERESPONDENT

RULING OF THE COURT

1. The Applicant herein Rose Nzioki Musembi has filed an Application dated 24/04/2017 seeking for an order from this court for a special limited Grant of letters of administration of the estate of the late **STEPHEN MUSEMBI NZUVE**. The said limited grant is for purposes of payment of school fees required by two of the beneficiaries namely – **JOAN LOISE MUSEMBI** and **CHRIS NZIOKI MUSEMBI** to their various Institutions of learning and other basic needs.

The Application is grounded on the following grounds:-

(a) That due to the urgency of the matter it would not be possible for the court to make a full grant in sufficient time to meet the necessities of the Estate of the deceased.

(b) That the Applicant has no powers to distribute the estate of the deceased under the Grant.

2. The Application is also supported by an annexed affidavit of the Applicant sworn on even date in which she deposed that pursuant to the revocation of Grant in **Succession Cause No.79 of 2016 at Kangundo** it might take a while before another grant is issued and thus she seeks out be allowed to continue collecting rental income from properties belonging to the deceased namely *Boomer House, Kwa Ndeti and Kanisani B* totaling to Kshs.141,000/= per month which was catering for the urgent school fees of two of the dependants herein as she is currently a widow and unemployed. She further deposed that her co-administrator collects rental income from three other properties of the deceased namely *Makuti, Kanisani A and Mavoko*. The Applicant further deposed that she urgently needs school fees for her two children which she anticipated to be at the sum of Kshs.1, 748,080. The Applicant further seeks for an order to access the benefits of the deceased from the University of Nairobi where deceased worked before he died.

3. The Application was strenuously opposed by the Applicant Co-administrator and who raised the following grounds of opposition:-

(a) That the Applicant's claim that the grant would take time is not true as this court has already issued letters for administration and given a near date for further directions on confirmation of grant.

(b) That any purported delay has been due to the Applicant's refusal to avail the title documents of the estate so that a summons for confirmation of grant could be made.

(c) That the Applicant has been collecting rental income to the tune of Kshs.150,000/= per month from the premises since December, 2015 which is the region of Kshs.2 million which she has never accounted for and cannot be heard to say that she is unable to pay school fees for the two children.

(d) That the Applicant upon obtaining certificate of grant at Kangundo law courts has withdrawn monies from deceased bank accounts and has not accounted thereof.

(e) That the Applicant recently retired as a high school teacher and cannot therefore claim not to have any monies to cater for the children.

(f) That the Applicant receives income from sale of water from a borehole sunk within her homestead.

(g) That the Applicant took possession of three vehicles that could generate income for herself and children.

(h) The Application is an afterthought calculated to hoodwink the court yet she has the means with which to educate the children before confirmation of grant.

(i) The Applicant should file an affidavit of means by providing the statements of account she owns so as to assist the court decide whether or not to allow the prayer for limited grant.

(j) That there is no urgency at all as claimed by the Applicant and that both parties should proceed to file for confirmation of grant so that all beneficiaries and dependants can equally be provided for.

(k) The Application should be dismissed with costs.

4. Learned Counsels for the parties presented oral submissions on the issue of whether there is urgency in the Applicant's Application dated 24/04/2017 to warrant this court to grant an order of Limited grant of letters of administration pending the parties appearing before High Court No. 1 for the purpose of taking directions as regards the filing of summons for confirmation of grant. The Counsel for the Applicant submitted that the 21/06/2017 is too far since the Applicant's two children are likely to be thrown out school due to non-payment of school fees. It was submitted for the Applicant that upon the revocation of the confirmed grant in Kangundo Succession Cause No.79 of 2016 and upon an order of this court appointing the Applicant and Respondent as joint administrators, the Applicant has already deposited the sum of Kshs.150,000/= into the estate joint account and as such she has no money with which to pay the school fees for the children and therefore the need for the limited grant to enable her draw monies from the joint account.

5. It was submitted for the Respondent that there is indeed no urgency in the Applicant's Application since the parties already are scheduled to appear before High Court No. 1 on 21/06/2017 for directions on the issue of confirmation of the grant. Respondents counsel further submitted that the Applicant had been receiving monies from rental premises as well as sale of water and running three vehicles in addition to the Applicants retirement pension plus sums withdrawn from the deceased's bank accounts and therefore the Applicant has all along been in good stead in taking care of her children's school fees and upkeep. The counsel submitted that the Applicant should wait for the 21/06/2017 as earlier on scheduled.

6. I have considered the submissions of learned counsels for the parties herein. I have also perused the rival affidavits of the parties herein. The issue for determination by this court at this juncture is whether or not the Applicant's Application dated 24/04/2017 is urgent to entitle this court to entertain it before the 21/06/2017 when the parties are expected to appear before high court No.1 for directions on the issue of

confirmation of grant. The record reveals that the parties herein appeared before High Court No.1 on the 24/4/2017 where the following orders were issued by consent:-

- 1. That the confirmed grant issued in Succession Cause No.79 of 2016 at Kangundo law courts was revoked.**
- 2. That any properties belonging to deceased that had been transferred were ordered to revert back to the deceased's name.**
- 3. That the Applicant and Respondent herein were appointed as joint administrators of the estate for the deceased and letters of administration were to issue to the said administrators forthwith.**
- 4. That all rental income from the properties of the deceased were to be deposited in a joint interest earning account to be opened in the joint names of the administrators. The account opening was to be effected within 14 days and the deposits were to take effect from 1st May, 2017.**
- 5. The administrators were to be at liberty to apply as to the use and payment of the said monies so deposited to meet the estate of dependant expenses.**
- 6. The administrators were to file and serve fresh summons for confirmation of grant within 30 days.**
- 7. The status quo was to be maintained.**
- 8. Matter was to be mentioned on the 21/06/2017 for directions.**

7. Looking at the above orders issued on the 24/04/2017, the parties were thus expected to get down and proceed to comply with the said orders. However, the same day and even before the ink of the orders above could dry, the Applicants filed the present Application under certificate of urgency. Indeed it was obvious that the parties were yet to start the process of account opening which would obviously take some days before any deposits could be made into the said account. Again the order directed that the deposits were to commence from 1st May, 2017. It is therefore quite obvious that as at 24/04/2017 there was no joint account in place from which the Applicant could seek to draw money. The Applicant has not explained as to whether such an account is in place so as to access money as now sought. It is noted that the first deposits if any was to start from the 1/5/2017. It is doubtful if the said joint account could have been operational as by the 24/4/2017 and this lends credence to the order by the court that parties were expected to appear on the 21/06/2017 for further directions as it was hoped that by that time several things would have been put in place. It seems the Applicant took advantage of Order Number 5 which was to the effect that each party was to be at liberty to apply as to the use and payment of the monies so deposited to meet the estate of dependants expenses. The Applicant was well aware that the account was yet to be operational and therefore even if she is to obtain a Limited Grant the same would be of no use to her in view of the prevailing circumstances. It also transpired that both the Applicant and Respondent had been handling themselves prior to the above consent order and it was therefore logical that each one of them was to continue to try and hold their forts pending the opening and operationalization of the joint account. The Applicant claims to have already made a deposit of Kshs.150,000/= but did not indicate the account into which the sums were paid. It is highly unlikely that she had made such a deposit as claimed. I am therefore inclined to agree with the Respondent's Counsel's submissions that the parties herein should wait until the 21/06/2017 as directed on the 24/4/2017. Even though the Applicants children or any of the beneficiaries are entitled to benefit from the estate, it is premature to grant such an order as sought at this stage in view of the fact that the administrators are yet to open the joint account. Again the administrators are also required to have filed for confirmation of grant by the 21/06/2017.

8. In the result I decline to certify as urgent the Applicants' Application dated 24/4/2017 for Limited Grant of Letters of Administration. I direct that the parties herein do appear before High Court No.1 on the **21/06/2017** for further directions as regards to the orders issued on 24/4/2017 and further on

directions as to how the Applicant's two Applications dated 24/4/2017 are to be canvassed.

It is so ordered.

Dated, signed and delivered at Machakos this 25TH day of MAY 2017.

D. K. KEMEI

JUDGE

In the presence of:

Kavita for Karanja for Respondent.....

Miss Mwevya for Applicant

C/A: Kituva

D. K. KEMEI

JUDGE

25/05/2017