



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 550 OF 2015

IN THE MATTER OF THE ESTATE OF MICHAEL KIMANDO MWANGI (DECEASED)

MARGARET WANJIRU KIBE.....1ST PETITIONER

TERESIA WANJA MBUTHIA.....2ND PETITIONER

RULING

1. The deceased in this cause died intestate on 31st January, 2015 at Engashura in Nakuru. A grant of letters of administration intestate was issued to the 1st and 2nd Petitioners, his widow and cousin respectively, on 25th October, 2015. By the present application dated 21st January, 2016 which has been brought under **Section 71 (3)** of the **Law of Succession Act, Cap. 160** (hereinafter referred to as the Act) and **Rule 40** of the **Probate and Administration Rules** (hereinafter referred to as the Rules), they have sought the confirmation of the grant before the expiry of the statutory six (6) months period.
2. The application was supported by a joint affidavit sworn by both petitioners and was not opposed. It was premised on the grounds that the deceased was survived by minor children aged 14, 11 and 8 years. His widow, the 1st Petitioner, requires the money in the deceased's account at Barclays Bank to be able to pay the minors' school fees. However, she cannot access it because the grant has not been confirmed. She asked the court to confirm the grant before expiry of the six months provided for under **Section 71 (1)** of the Act owing to the special circumstances of this case and the fact that all the beneficiaries had consented to the application.
3. **Section 71** of the **Law of Succession Act** provides:-

“71(1) After the expiration of a period of six months or such shorter period as the court may direct under subsection (3) from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.”

4. Subsection (3) of the same section provides:-

“The court may on the application of the holder of a grant of representation, direct that the grant be confirmed before the expiration of six months from the date of the grant if it is satisfied-

- a. **that there is no dependant of the deceased as defined by Section 29 or that the only dependants are of full age and consent to the application;**
- b. **that it would be expedient in all the circumstances of the case so to direct.”**

5. I have considered the application and the averments of the applicants. I agree with the applicants that the urgent need to pay the minors' school fees is a compelling reason that would warrant the confirmation of the grant before the six months expire. I also note that the beneficiaries conceded to the application.
6. However in the consent to the confirmation of the grant that was filed in support of the application, only one of the deceased's properties, Barclays Bank Account No. [particulars withheld], was distributed. The other deceased's assets namely, shares at [particulars withheld], and death gratuity benefits due from the [particulars withheld] were not included in the consent and there was no proposal even in the supporting affidavit as to how they would be distributed.
7. It follows therefore that the grant cannot be confirmed as it is because it does not deal with all the entire estate. However, owing to the special circumstances of this case, that is the need to pay the minors' fees, I find that it is in the interest of justice to partially confirm the grant in terms of the proposal that was agreed upon by the beneficiaries as contained in the general form that was attached to the application.
8. Accordingly, the application dated 21st January, 2016 is allowed as follows-
 - a. the grant of letters of administration issued to Margaret Wanjiru Kibe and Teresiah Wanja Mbutia on 25th October, 2015 is hereby partially confirmed on the terms that the funds in Barclays Bank Account Number [particulars withheld] shall be distributed to Margaret Wanjiru Kibe;
 - b. the administrators shall file in court a further affidavit proposing the mode of distribution of the remaining assets of the deceased, namely, shares at [particulars withheld] and death gratuity benefits due from the [particulars withheld] to enable the court fully confirm the grant; and
 - c. there are no orders as to costs.

Dated, Signed and Delivered at Nakuru this 23rd day of February, 2016.

A. K. NDUNG'U

JUDGE