



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**CIVIL APPLICATION NO. 8 OF 2014**

**1. I M M**

**2. R N G ..... APPLICANTS**

**VERSUS**

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

**In the matter of the estate of M M M (Deceased)**

**RULING**

This is an Originating Summons dated 15<sup>th</sup> September 2014 filed by the two applicants I M M (brother of the deceased) and R N G (widow of the deceased). The deceased is M M M who was working in the Kenya Police Service at the time of his death on 13/09/2012.

The application was filed under Section 42 (1) of the Trustee Act (Cap 167) and Rules 2, 3, 4 and 5 of the Trustee Rules 1948.

The applicants seek the following orders:

1. That orders do issue allowing the applicants to be the Trustees of F M M
2. That the applicants be granted orders to substitute the office of the Public Trustee to act as Trustee of F M M
3. That cost of the application be in the cause.

The application has several grounds on the face of the Originating Summons. It was filed with an affidavit sworn separately by each of the two applicants.

The facts as given in the grounds and the affidavits filed are that the deceased was a police officer who died in a road accident at Mwingi on 13/09/2012. That he left behind a widow R N G (2<sup>nd</sup> applicant herein) and a daughter F M M aged 2 years. That the deceased was a beneficiary of the civil service group accident insurance policy. That the widow had now been paid her 40% share of the insurance compensation proceeds. That the 60% share of the insurance compensation proceeds was the entitlement of the young daughter and was currently held by the Public Trustee. That the two applicants want to substitute the Public Trustee, as trustees of the child’s share of the insurance compensation.

The Public Trustee (Garissa) was served with the application. Mr. C. O. Nziyogo who appeared for

the Public Trustee at the hearing of the application did not oppose the requests of the applicants. He merely urged the court to issue orders that would ensure that the applicants acted in the best interests of the child F M M.

Mr. Mwangi learned counsel who appeared for the applicants submitted that, as the application was not opposed, orders should be granted as prayed for.

Having considered the application and the submissions of the Public Trustee and the applicants' counsel, and since the application is not opposed and the two applicants are close relatives of the child, I allow the application. I grant the prayers sought.

I however order that the applicants will invest the money in a joint interest earning bank account, with a reputable bank. The so invested money will not be withdrawn without an order of this court, in order to protect the child's best interests.

**Dated and delivered at Garissa this 12<sup>th</sup> Day of February, 2015**

**GEORGE DULU**

**JUDGE**

**In the presence of:**

**Mr. Nzili h/b for Mr. Mwangi for the applicants**

**Martin Court Clerk.**