



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**IN THE MATTER OF JOK (DECEASED)**  
**SUCCESSION CAUSE 2069 OF 2014**  
**(SUCCESSION CAUSE 211 OF 2015)**  
**(SUCCESSION CAUSE 187 OF 2015)**  
**IN THE ESTATE OF JOK**

**GREGORY HENRY KIMORE.....1<sup>ST</sup> APPLICANT**

**KAREN PEGGY KIMORE.....2<sup>ND</sup> APPLICANT**

**RULING**

By an Application under certificate of urgency filed on 1<sup>st</sup> August, 2015 the Applicants sought orders on the following grounds;

- a. The applicants parents passed away on 29<sup>th</sup> July, 2014
- b. They left the Applicants and 2 minor children
- c. The parents' relatives harassed the deceased's children
- d. The relatives demanded from the children of the deceaseds' motor vehicles, title deeds and money
- e. The relatives have been intermeddling with the estate.
- f. The Applicants seek protection from the Court in the interest of justice, the Court makes orders as deemed fit and the same be supervised by OCS Kamiti Police Post.

The Applicants attached to the application a petition for limited letters of administration *ad litem* limited for the purpose of collecting, gathering and preserving the deceaseds' estate until further representation is granted.

The Applicants who are biological children of the deceaseds' aged 21 and 19 years respectively. They attached Identity cards, birth certificate and letters from the local administration that confirmed there are 4 children left behind.

On 29<sup>th</sup> September 2015 when the matter was slated for hearing, the Court requested the presence of the children to attend Court.

On 8<sup>th</sup> October 2015, the 3 children, their lawyer and Uncle were present in Court.

The Children are; Gregory Henry Kimore; 20 years old 2<sup>nd</sup> year student at University of Nairobi. Karen Piggy Kimore; 22 years old 1<sup>st</sup> year in USIU; and LK, 12 years old in Class 7 and an 11month baby girl.

They confirmed they got financial and social support from their maternal grandmother Ms. Phoebe Kalondu and maternal Uncle Mr. Nicholas Makuno who accompanied them to Court and paternal Auntie Serah Achieng.

The Court considered the pleadings and oral evidence from the family members present and also submissions by Mr. Mutua Counsel for the children.

The Court is persuaded that the children are adults and impressed the Court as capable of living together at their home with the young siblings, with the support of Irene; the lady who helps maintain the household. She was there during their parents' lives. The Children do the shopping for the home, prepare the young sibling to go to school and secure medical attention if and when required. However, this can only be sustained with the support of the maternal and paternal family.

This Court is however concerned about the safety, protection, support and care of the 2 children L K 12 years and 11month baby girl.

**Article 53 (1) (c) (d) & (e) & 53 (2) Constitution 2010** provide for that the best interests of the child(ren) are paramount and they are entitled to basic nutrition, shelter and healthcare, care and protection from abuse and neglect.

**Section 4 of the Children Act, 2001**, provides that interests of the child shall be treated as the first and paramount consideration. Therefore although the application concerns mainly provision of a limited grant, this Court cannot overlook the fact of 2 minor children whose interests must be safeguarded.

With regard to the application for limited grant, the Court finds that the Applicants have laid out sufficient grounds for limited grants. The circumstances explained in Court are special and warrant urgent interim orders to arrest and avert the current situation of relatives harassing the children of deceaseds' to release and or transfer property to them.

In the instant case, the adult children of the deceaseds' are capable of administering their parents' estates.

The Court notes that there are separate Court files with petitions for grant of letters of administration.

**In Succession Cause 187 of 2015** the proposed administrators who filed the petition are Nicholas Mathithi Makunu (Uncle) and Sarah Achieng Kimore (Auntie) for the estate of JOK deceased father of the Applicants.

**In Succession Cause 211 of 2015** the proposed administrators who filed the petition are Nicholas Mathithi Makunu (Uncle) and Sarah Achieng Kimore (Auntie) for the estate of NNN deceased mother of the Applicants.

**Section 66 of the Law of Succession Act, Cap 160** stipulates the beneficiaries' order of priority in appointment of administrators of an intestate estate.

Where 1 spouse is deceased the other spouse is the administrator of his or her estate. Where both spouses are deceased, then amongst the children of the deceaseds', administrators are appointed with consents of all adult children.

In the instant case, the adult children of the deceaseds' are the administrators of their parents' estates.

## **FINAL ORDERS**

**To enable the adult children of the deceaseds' to collect, gather the properties that comprise the**

estate and access funds limited to subsistence and utilities until a full grant is issued, Court orders as follows;

1. The Court Files 211 of 2015 and 187 of 2015 are hereby consolidated to the present file Succession Cause 2069 of 2014
2. Karen Peggy Kimore & Gregory Henry Kimore are appointed joint administrators of the deceaseds' estates under section 66 of the Law of Succession Act Cap 160.
3. LK and the 11month baby Girl are wards of the Family Court. In the meantime all matters regarding their education, subsistence and medical care shall be on application to the Court for Orders to access the deceaseds' estate until further Orders of the Court and /or until full grant of letters of administration are issued and trust established for the children.
4. The Deputy Registrar Family Division to issue Witness Summons to Children Welfare Officer Nairobi to conduct a home visit, interviews and assessment of the home situation and file a report with recommendations on what factors, issues should the Court consider and arrangements to be made to best promote the children of the deceaseds' welfare. The Report shall be presented in a month's time.
5. The Applicants/Administrators are granted limited grant of letters of administration *ad litem* to sue or be sued on behalf of the deceaseds' estate.
6. The Applicants/Administrators are granted limited grant of letters of administration *colligenda bona* to gather and collect the properties of their parents that comprise the estate.
7. The Applicants/ Administrators are granted special limited grant to apply with attached documents to prove the necessity for specific sums to be withdrawn from the estate accounts to cater for school fees and expenses, medical cover for all children, subsistence and utilities expenses.
8. The limited grants are issued pending the Applicants/ Administrators filing petition within 120 days for full grant of letters of administration of the estate as provided under Section 67 of the Law of Succession Act Cap 160.
9. The matter shall be mentioned for compliance or directions on 18<sup>th</sup> November 2015.
10. Each or any party is at liberty to apply.
11. No order as to Costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS DAY OF 21<sup>ST</sup> OCTOBER 2015

M.W. MUIGAI

JUDGE

*In the presence of;*

Parties & Counsel