



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT CHUKA**

**SUCCESSION CAUSE NO. 594 OF 2015**

**FORMERLY CHUKA SUCCESSION CAUSE NO.74 OF 2015**

**JEPSON NYAGA IRERI.....DECEASED**

**AND**

**CELESTINE NGACHE MJOMBA.....PETITIONER**

**RULING**

1. This is a ruling on prayer No.3 of the summons dated 30<sup>th</sup> November, 2015. Prayer Nos.1 and 2 thereof were granted on 3<sup>rd</sup> December, 2015. In prayer No.3 of the summons, the Administrators seek that the grant issued on 16<sup>th</sup> November, 2015 be confirmed before the expiry of six (6) months.

2. The reasons set out in the body of the summons are that there is urgent medical issues, school fees and rental arrears which need to be settled; that the 1<sup>st</sup> Petitioner is sickly and needs funds to settle medical expenses; that for the foregoing reasons, the grant should be confirmed before the expiry of six (6) months. These were reiterated in the Supporting Affidavit of CELESTINE NGACHE MJOMBA sworn on 30<sup>th</sup> November, 2015. In that Affidavit CELESTINE produced several documents including a note from Ruiru Diagnostic Centre dated 13.1.2015, an invoice of the same date by the same facility for Kshs.72,375/=, a fee structure for 2016 from Ruiru Precious Cornerstone Academy.

3. Both the Petitioners appeared and testified. PW1, Celestine Ngache Mjomba told the court that she is the widow of the deceased with whom they begot three (3) children to wit, A, T and B I. That the Co - Petitioner was her father in law. She also testified on how she intended to distribute the estate. She clarified that her children were aged 11, 5 and 3 years respectively and not 5, 3 and 1 year as had been noted by the court on 2.12.2015. On his part, PW2 Clifford Mbae Nabea told the court that he was an uncle to the deceased and that his interest was not adverse to those of the minor beneficiaries. Mr Kijaru, Learned Counsel for the Petitioners submitted that the Petitioners will take care of the minors. That if the grant is not confirmed the minors may lose their education.

4. I have considered the Affidavit on record, the testimonies of the witnesses. I have also considered Mr.Kijaru's able submissions. This is an application for confirmation of grant before expiry of 6 months. Section 71 of the Law of Succession Act, Chapter 160 of the Laws of Kenya is very particular that no grant may be confirmed before the expiry of six (6) months except on special circumstances. A grant can only therefore be confirmed after six (6) months of its issuance.

5. The reasons advanced are that there are rental arrears, medical expenses and education fee that need to

be settled. Firstly, I have noted that the medical expenses of Kshs.72,375/= dated back to 16.3.2015 when the deceased was still alive. The deceased was an employee of Kenya Power & Lighting Company. He is expected to have been medically covered by his employer. Usually, such a cover is expected to extend to his immediate family, that is his wife and children. Why was the 1<sup>st</sup> Petitioner not covered and the medical bills incurred by her before the demise of the deceased settled? As regards school fees charges, there is no evidence that the fee structure from Ruiru Precious Cornerstone Academy relate to the minor beneficiaries. It was neither alleged deponed that the minors attend that school.

6. Further to the foregoing, it was neither alleged by any of the Petitioners in their Affidavits or testimonies that the 1<sup>st</sup> Petitioner does not have any other source of income from which she can take care of the expenses alluded to. To my mind, there was no good reason alluded to for this court to dispense with the requirement of the grant being confirmed after 6 months.

7. In addition to the foregoing, the court notes the following:-

- a. The deceased died on 7.6.15
- b. the letter of the Chief was obtained 10 days later;
- c. the Death Certificate was issued on 8.7.15;
- d. the Petition was filed on 20.7.15
- e. the Petition was gazetted on 1.9.15 and the grant issued on 16.11.2015;
- f. there is no original letter of the Chief addressed to the court confirming the beneficiaries of the deceased. The one on record is only a copy and is addressed to the Deputy County Commissioner Maara Sub County;
- g. the original Death Certificate is not on record. What is there is only a photocopy which is certified by not the court but by an Advocate referred to as Macharia Muraguri.

8. For the foregoing reasons, I find that no good reasons have been advanced to confirm the grant before the expiry of six (6) months.

9. However, for the avoidance of any doubt, I direct that before the grant is re-issued and given to the Petitioner as ordered on 2.12.15, the original Death Certificate and Letter of the Chief or Deputy County Commissioner Maara- Sub County should be surrendered to court for retention. Further, an application for the confirmation of grant before six (6) months may be made at any time if the cirmcumstances change or if good reasons arise.

Dated and delivered at Chuka this **8<sup>th</sup>** day of **December, 2015**

**A.MABEYA,**

**JUDGE.**