



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CIVIL APPEAL NO. 49 OF 2012**  
***IN THE MATTER OF THE ESTATE OF ISAACK IBRAHIM KINYUA (DECEASED)***  
**H H.....APPELLANT**  
**VERSUS**  
**MOHAMED IBRAHIM KINYUA.....RESPONDENT**

**R U L I N G**

The appellant H H through an application dated 19<sup>th</sup> March, 2014 pursuant to Section 47 of the Law of Succession Act, Rule 49 and 73 of the Probate and Administration Rules prays that the Honourable Court do issue an order that Kshs.70,000 be released by NSSF to her from the contributions of the deceased Isaac Ibrahim Kinyua(P.NO.17687) to cater for form one fees and other school necessities for Z N. The application is based on the grounds on the face of the application and supportive affidavit and annexures thereto.

The child in question is a child of the deceased and needs school fees to join Form 1. The deceased left behind contributions amounting to Kshs.741,15 with NSSF and notwithstanding the deceased child having been admitted to Facing [particulars withheld] she is currently attending a day school and risks losing her chance to attend the said school. The admission letter is attached and marked as “HH2”. The Kadhi court in its judgment shared the deceased estate and indicated the share of each child. It said the share of each girl child shall be the remainder after H H’s share of 21/168 being 17/119.

The respondent on the other hand filed a R/A referring to Kadhi’s court judgment delivered on 25/4/2012 stating he had no objection to the application so long as each child was awarded his or her money. The said judgment is pending appeal and there has been no order of stay. The respondent is not opposed to Z N from joining the Secondary School in question but should be given the money from the share due to her as per Kadhi’s decision.

I have carefully perused the application and pleadings in this matter. I have also considered the submissions by the parties for and against the application. I am in dealing with this application aware of the existing appeal and need not to deliver a ruling that would render the appeal nugatory or greatly affect the implementation of the decision that may be reached in the appeal. I have noted that each child’s share has been determined by the Kadhi’s court . The decision has not been set aside and in the interest of justice status quo ought to be maintained.

In view of the foregoing I would grant the application as the share of each party has been determined pending the outcome of this appeal, I would order that NSSF do release to the applicant sum not

exceeding Kshs.70,000/- otherwise she should not get a share beyond what was granted by the Kadhi in his decision dated 25<sup>th</sup> April, 2012.

The upshot is that the application is allowed in the following terms:-

***(a) NSSF do calculate from the sum of contribution by the deceased the share due to Z being 17/119 of the remainder after H H share of 21/168 and boys share of 34/119.***

***(b) NSSF to release part of the shares to Z N limited to Kshs.70,000/- if her share exceeds Kshs.70,000/- or whatever sum is due if it is less than Kshs.70,000/-***

***(c) Each party to bear its own costs.***

***DATED, SIGNED AND DELIVERED AT MERU THIS 28<sup>TH</sup> DAY OF MARCH, 2014.***

***J. A. MAKAU***

**JUDGE**

***DELIVERED IN OPEN COURT IN PRESENCE***

1Mr. Mutuma h/b Kitheka for applicant

2. Respondent in person - present

***J. A. MAKAU***

**JUDGE**