



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 195 OF 2013

CATHERINE WANGUI &

FLORA WANJIRU PETITIONERS

VERSUS

DAVID NDUNGU KIMAMA RESPONDENT

RULING

The petitioners took up the summons, dated 26th March, 2013 seeking orders:

1. That the court be pleased to freeze account No.0230199926795 Equity Bank, Molo Branch, operated by the respondent.
2. That pending the hearing and determination of this cause, the court be pleased to order the transfer of all moneys, not exceeding Kshs.3,332, 878/=, from the respondent's account in (1) above to the deceased's account No. O 130100224117 Equity Bank, Malo Branch; and
3. That pending the hearing and determination of the this cause, the respondent be restrained from intermeddling or interfering in any manner with the estate of the deceased.

The application is supported by the affidavit of, Catherine Wangui Macharia (one of the petitioners herein) and is premised on the grounds that the deceased passed on on 18.8.2012; that the deceased was survived by the petitioners and six children and that the deceased was entitled to Kshs.3,332,878/= from his employer (Norwegian Refugee Council) as terminal benefits.

Further that the terminal benefits were released to the respondent on the understanding that the respondent would distribute them to the petitioners but, the respondent, upon taking the monies, reneged on the agreement and engaged in spending spree. Apprehensive that the monies would be depleted, the petitioners took up the summons herein to safeguard their interest and that of the other beneficiaries of the estate.

In the affidavit sworn in support of the summons, the deponent, has reiterated the grounds stated thereon and averred that owing to differences between her and her co petitioner, they agreed that the deceased's terminal benefits herein should be released to the respondent. The agreement between them and the respondent was that the respondent would receive the money and thereafter distribute it to them. Pursuant to their agreement, the deceased's terminal benefits were deposited into the respondent's account No.[...] Equity Bank Molo. The respondent reneged on the agreement and refused to distribute the money to them and instead engaged in spending spree. Reliable information obtained is that the money remaining in the respondent's account is Kshs.900,000/=. The applicants are apprehensive that the

respondent is hell bent on wasting the estate of the deceased and completely disinheriting them. The deceased was survived by six children, all below 12 years of age, who require money for daily upkeep and school fees; and the deceased has no other assets.

Annexed to the applicants' supporting affidavit are: the deceased's death certificate (**annexture EWM 1**), and a letter from the deceased's employer (**annexture EWM2**). The letter from the deceased's employer, inter alia, provided that:-

"The total amount of Kshs.3,332,878/= will be paid out in one-time lump sum to Mr. David Ngungu Kimama (the respondent herein) holder of National I.D No. [.....] who is the late Njenga Nganga's brother and the Administrator of the deceased's estate appointed by the family members."

The petitioners and the respondent signed to the deceased employer's letter above paving way for release of the deceased's terminal benefits to the respondent.

On 21.11.2013 when the matter came up for hearing, I ordered the applicant to file a supplementary affidavit to confirm that account No. [...] is in the name of the deceased.

Subsequently, the petitioners filed the affidavit sworn 10th January, 2014 confirming that fact.

Having read and considered the issues raised in this application, I have no doubt that the estate of the deceased herein has been wasted and is in danger of being further wasted.

There being evidence that the respondent was served and failed to respond to the issues raised herein, I allow the application as prayed.

Dated, Signed and Delivered at Nakuru this 30th day of May, 2014.

H. A. OMONDI

JUDGE