

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.2071 OF 2011

IN THE MATTER OF THE ESTATE OF PAUL MBUGUA KIBE–(DECEASED)

RULING

1. On 12th May 2014, Mr. Makumi, for the applicant in the applicant dated 26th March 2014, and Mr. Sato, for the respondent in the said application, addressed me on matters of stay of execution, leave to appeal and on interest accrued to the principal sum that was the subject of the ruling dated 21st March 2014.
2. Mr. Makumi submitted that the court only distributed the principal sum of Kshs.32,989,193.00, but did not address or express itself on the interest accrued on the said sum. He stated that as at 21st March 2014 the interest the interest stood at 2,899,709.00. He proposes that the interest should be distributed at the same ratio as that employed in the distribution of the principal amount. He prayed for leave to appeal for stay of execution with relation to the accrued interest.
3. Mr. Sato took the view that the ratio used in the ruling dated 21st March 2014 was pegged on the total sum of Kshs.42,000,000.00, yet the amount accrued as interest was on the sum of Kshs.32,989,193.00. He proposed that the interest sum ought to be shared equally between the five survivors of the deceased. He indicated that he did not oppose leave to appeal, but was objecting to stay of execution being granted.
4. The money the subject of these proceedings makes up a considerable portion of the estate of the deceased. The applicant is aggrieved by the manner that I dealt with the distribution in my ruling of 21st March 2014. She is within her rights. She should have the opportunity to ventilate her case before the appellate court. I will grant her plea in that respect, especially as the respondent is not averse to such leave being given.
5. The money that was available for distribution between the five survivors of the deceased was Kshs.42,000,000.00. Before the time for distribution had accrued, the respondent took out a sum of Kshs.10,000,000.00 and utilized it on herself and her children. The other two survivors did not benefit from this amount. If that amount had remained in the bank, it would have accrued interest. It would then made sense to distribute the interest accrued on the global sum. Since the respondent and her child enjoyed the benefit of the sum of Kshs.10,000,000.00 to the exclusion of the other two survivors, it is only fair that the interest accrued on the balance of Kshs.32,000,000.00 be distributed in the ratio used in the ruling of 21st March 2014.
6. Mr. Makumi argues that I should have factored the sum of Kshs.4,325,000.00 that was taken by Mr. Mureka, the previous advocate for the respondent, in my ruling of 21st March 2014. He states that he will peg the applicant's appeal on this point and on the ratio that I worked out to distribute the amount of Kshs.32,989,193.00. His position is that that amount accrued as interest would cater for the applicant's concerns should the intended appeal succeed. There is merit in this argument. The respondent has not demonstrated that she would have the money to make up for any difference should the court find in the applicant's favour.
7. The final orders that I make in the circumstances are:-
 - a. That the amount of accrued interest on the sum held by the Standard Chartered Bank, Kiambu Branch Account number *[particulars withheld]*, shall be distributed between Catherine Njeri Nduati, Cynthia Mumbi Mbugua, Philip Kibe Mbugua, David Allan Kibe Mbugua and Brian Joel

Gatungo Mbugua following the ratio used in the ruling of 21st March 2014 in the distribution of the principal sum;

- b. That leave is granted to the applicant to appeal against the said ruling of 21st March 2014;
- c. That the withdrawal of the amount accrued as referred to in (a) above and the distribution thereof is hereby stayed pending the hearing and determination of the appeal the applicant intends to file at the Court of Appeal or until further orders of this court.

DATED, SIGNED and DELIVERED at NAIROBI this 26th DAY OF May, 2014.

W. MUSYOKA

JUDGE

In the presence of Mr. Makumi advocate for the plaintiff.