

REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

CIVIL SUIT NO. 58 OF 2009

CEDRIC JUMA BARASA.....PLAINTIFF

VERSUS

ZAKIUDDIN ANWARAL MULLAS.....DEFENDANT

RULING

The application dated 22nd September, 2014 seeks the release of Kshs. 20,000 to the Applicant this being school fees in respect of C W B. The Applicant would also wish to be made the sole administrator of the 60% share of the deceased's estate. The Application is supported by the Applicant's affidavit sworn on 22nd September, 2014. The Respondent filed a replying affidavit sworn on 2nd December, 2014.

The arrangement to have the 60% share managed jointly by the two parties seemed to have been reached by consent. The child is still a minor and therefore there cannot be a single administrator. The law requires a minimum of two administrators in such situations. It is clear from the pleadings that the 60% share is managed jointly for the benefit of the child. There is no evidence that the Applicant requested the Respondent to release some money for the child's school fees and the Respondent refused. The Respondent should also be made to understand the purpose of each withdrawal from the account. The claim for Kshs. 20,000 is based on a letter and not a fee structure. The court allowed that payment. However, next time the Applicant should be able to annex the fee structure as opposed to a letter.

The beneficiary of the money deposited in the joint account is a minor aged about 7 years old. The child has a very long way to go. I do find that there is need to have the funds managed prudently. There is no allegation of mismanagement of the funds by the Respondent. Indeed, the Respondent's concern is the welfare of the child.

Given the pleadings herein, I am satisfied that the best interest of the child will be served if the funds are held in the joint account as it is the case now. The Applicant is at liberty to apply for release of the funds whenever necessary but for a good cause taking into account the fact that those funds have to cater for the child's education in the next ten to fifteen (15) years.

Other than the prayer for kshs. 20,000 that was granted *ex parte*, I do find that the application dated 22nd September, 2014 lacks merit and the same is dismissed with no order as to costs.

Dated and signed at Malindi this **17th** day of **December, 2014** in the presence of:

Said J. Chitembwe

JUDGE