



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Succession Cause 108 of 2012**

**IN THE MATTER OF: THE ESTATE OF WESLEY KIPRONO KIMETTO (DECEASED)**

**AND**

**EUNICE WAMBUI KIMETTO.....APPLICANT**

**RULING**

By this Notice of Motion dated 12<sup>th</sup> May, 2012 brought under certificate of urgency **EUNICE WAMBUI KIMETTO** the widow of the deceased **WESLEY KIPRONO KIMETTO** sought a Limited Grant to the estate of the deceased to enable her access a portion of the deceased's pension from the Kenya Revenue Authority in order to pay for the maintenance and upkeep of the children of the family. In a further affidavit filed in court on 17<sup>th</sup> May, 2012 the applicant indicated that she required a total sum of Kshs. 270,000/= to cater for these needs. In her application the applicant named the other beneficiaries of the deceased estate as:

1. Esther Ruto – Mother
2. Timothy Ruto – Father
3. Felix Kipkoech Kimetto – Son
4. Mercy Chebet Kimetto – Daughter
5. Victor Kipkoech Kimetto – Son

On 23<sup>rd</sup> May, 2012 Hon. Justice Muriithi made orders directing that the Kenya Revenue Authority do provide a statement of account of the terminal benefits due to the deceased. By a letter dated 28<sup>th</sup> November, 2012 and filed in court on 3<sup>rd</sup> December, 2012 the Kenya Revenue Authority did comply by indicating that the total sum due and owing as terminal benefits to the deceased is Kshs. 1,620,000/=. This letter also gives the names of the children of the deceased and in addition indicates the percentage of the terminal benefits due to each nominee.

I have considered this application as well as the affidavits in support and the annexures. The applicant has averred that after the death of the deceased his family chased her away from their rural home in Kericho with the result that the relationship is now strained. She has annexed the birth certificates of the two children M.C and V.K which names the deceased as the father of both children. She has also annexed a marriage certificate serial No. 111938 as proof of her marriage to the deceased on 11<sup>th</sup> May, 2005. The fees structure from [particulars withheld] School is also annexed. I am satisfied that *prima facie* the applicant has established that she does have *locus* in this matter being the widow of the deceased and the mother of his children. She has averred that she is unemployed and is in need of the monies sought to cater for the needs of the children. The amount sought in the application was Kshs. 270,000/=. However, I note that eight (8) months have elapsed since May, 2012 when the application was filed. No doubt fees is required for 1<sup>st</sup> term 2013 thus I do believe that the sum of Kshs. 270,000/= may now be inadequate. Taking into account all circumstances, I hereby allow the application and I do direct that a Limited Grant do issue to the applicant to enable her access funds due to the deceased as terminal benefits for the upkeep of the family. I further hereby direct that the Kenya Revenue Authority do

immediately release to the widow Eunice Wambui Kimetto the sum of Kshs. 648,000/= (Six Hundred and Forty Eight Thousand only) being the 40% entitlement to the deceased terminal benefits.

It is so ordered.

**Dated and delivered in Mombasa this 20<sup>th</sup> day of February, 2013.**

**M. ODERO**

**JUDGE**

In the presence of:

Mr. Jengo for Applicant

Court Clerk Mutisya