



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Succession Cause 2649 of 2011**

**IN THE MATTER OF S.M.H (DECEASED)**

**B.N.M..... 1<sup>st</sup> APPLICANT**  
**D.M.M ..... 2<sup>nd</sup> APPLICANT**  
**-VERSUS-**  
**G. N.M .....1<sup>st</sup> RESPONDENT**  
**C.M.M.....2<sup>nd</sup> RESPONDENT**

**RULING**

The application for determination is dated 18th March 2013. It seeks:-

- (a) That the order of 15th February 2013 be stayed.
- (b) That the order of 15th February be reviewed.

(c) That school fees for M.W.M and R.B.N be deposited in the account of the applicant and not directly to their respective schools accounts as directed by the court.

(d) That the administrators do pay money for the maintenance to the applicant and her children directly to the said applicants account.

(e) That the administrators of the estate do pay school related expenses directly to the applicant's account.

Apart from this application, I note that there are several others which are still pending. These are:-

- (1) Application dated 2nd October 2012 by E.W.T seeking to be included in the list of beneficiaries together with her children.
- (2) Application dated 26th October 2011 by the petitioners, B.N.M and D.M.M, seeking restraining orders against an objector and Kshs.500,000.00 for the maintenance of B.N.M.
- (3) Application dated 7th May 2012, by C.M.M, seeking annulment of a limited grant made to B.N.M and D.M.M.

I have noted from the record that the court has ordered release of funds from the estate an order was made on 13th December 2011 allowing release of a sum of Kshs. 800,000.00 from A/c No: [particulars withheld], KCB, Eastleigh. Another order was made on 18th July 2012 allowing release of a sum of 244,000.00 from A/C No:[particulars withheld], KCB Eastleigh. An order was made on 15th February 2013 authorising release of Kshs.44,550.00 from A/C No: [particulars withheld], KCB Eastleigh.

I have perused through and established that grant of letters of administration intestate has not been made; but a limited grant *ad colligenda bona* was issued to B.N.M and D.M.M, limited to collection and preservation of the estate. There is a pending objection to the petition for grant of letters of administration filed in court on 30th November 2011 by B.N.M and D.M.M.

I have also seen the ruling/directions given by Majanja J in Nairobi Milimani High Court Petition No: 257 of 2012. From this ruling by Majanja J, I note that there is a cause parallel to the instant one, filed in Nairobi High Court Succession Cause No: 2586 of 2011, where the petitioners seek grant of probate of the will of the deceased. His Lordship noted that there are parallel causes relating to the estate of one deceased person, and had directed that the two succession causes – that is to say No.2586 of 2011 and No. 2649 of 2011 be mentioned together on 29th April 2013, when the instant cause was due before me, for further directions. The ruling by Majanja J. was not brought to my attention on 29th April 2013 when the instant cause was mentioned before me, neither was I informed that there was another cause pending relating to the same estate.

Ideally, following the death of a person, only one cause should be commenced relating to his estate. The exception to this, of course, would be the case where the deceased died partially testate and partially intestate. In such event, two causes may be filed, one being for the purpose of administering the estate disposed of by will and the other for administering the estate under intestacy. That is not the case here. It is alleged that the deceased died testate, and that is why the petitioners in High Court Succession Cause No. 2586 of 2011 sought grant of probate. One side of the family contested the claim that the deceased died testate, and instead of filing objections in High Court Succession Cause No. 2586 of 2011 decided to launch a separate succession cause of their own in High Court Succession Cause No: 2649 of 2011 seeking letters of administration intestate.

As seen from the opening paragraphs of this ruling, litigation in High Court Succession Cause No: 2649 of 2011 has been very heavy, indeed too heavy for a cause where a full grant of representation is yet to be made. Large sums of money have also been taken out of estate accounts before the estate has been placed under effective administration and management. The picture emerging is that various beneficiaries are each fighting to get as much out of the estate as possible. The scenario is not pretty. The estate is not being handled in an orderly manner.

To bring order to the management of this estate, I will make the following orders/directions:

- (1) That the two causes, that is to say High Court Succession Cause No: 2586 of 2011 and High Court Succession Cause No: 2649 of 2011, shall be mentioned together, on a day to be given by the court for the purpose of consolidation and further directions.
- (2) That all pending applications in High Court Succession Cause No: 2649 of 2011 are hereby stayed, including this one dated 18th March 2013, pending the consolidation of High Court Succession Cause 2586 of 2011 and High Court Succession Cause No: 2649 of 2011.
- (3) That the filing of further applications in High Court Succession Cause No: 2649 of 2011 is stayed or frozen pending consolidation of High Court Succession Cause No: 2586 of 2011 and High Court Succession Cause No: 2649 of 2011.

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 16<sup>th</sup> DAY OF May, 2013.**

**W. Musyoka**  
**Judge**