



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION NO. 582 OF 2009

**IN THE MATTER OF THE ESTATE OF: GEORGE ONONO
OPONDO.....DECEASED**

AND

**IN THE MATTER OF APPLICATION BY: MARY ATIENO AWINO & ERIC ODUOR
ODONGO.....APPLICANTS**

RULING

The applicant **John Ochieng Opondo** vide the grant confirmed on 8-12-2010 is named as one of the beneficiaries and is entitled to the sums of Kshs. 85,784/=. The said amount was to be **“placed in an interest earning account with Barclays Bank of Kenya in the names of Mary Atieno Awino and Erick Oduor Odongo until each of the minor attains the age of 18. the applicants may utilize interest from the said funds”**.

This was expressly stated in the grant. The applicant has however filed the application dated 26-10-2012 seeking that he be paid his dues by the administrators who as quoted above were supposed to have deposited the amount at Barclays Bank of Kenya.

The affidavit of the deponent goes further to state that now that he has attained the age of majority he ought to be paid as he is at the risk of missing his university education.

The respondent, one Mary Atieno Awino vide her replying affidavit sworn on 22-11-2012 avers that she has used the amount from the estate alluded in the grant to settle the estates liabilities. She further argued that part of the liabilities included the applicant's school fees.

According to her the applicant has had bad blood between them and that in any case the deceased did not acknowledge paternity of the applicant.

Having perused the pleadings herein as well as the parties submissions I do conclude that this is a straight forward matter. The ultimate duties and the responsibilities of the administrators was to deposit the money in the bank till the beneficiaries including the applicant attained the age of majority , that is 18 years. The court permitted them to utilize any accruing interest for the benefit of the beneficiaries.

If indeed the administrators were saddled with debts due to the estate, the way they have demonstrated then they ought to have notified the court during the confirmation period as the debts were left behind by the deceased.

To take the applicant's benefits or entitlement and to apply the way they have done is not only illegal but unacceptable and contrary to the confirmed grant.

The respondent had a fiduciary duty to take care of the applicant interest as directed by the court. If the applicant was in any way the deceased's son or not that ought to have been raised during the proceedings but not when the same had been concluded.

I further note that the fees so far paid as exhibited in the replying affidavit was paid on 19-7-2006 prior to the deceased's death and the same amounts to Kshs.3000/= only and not Kshs. 96,600/= as claimed by the respondent.

I shall therefore, not hesitate to allow the application. The sum of Kshs. 85,784/= due to the applicant be paid by **Mary Atieno Awino** within 30 days from the date herein. Costs shall be in the cause.

Dated, signed and delivered at Kisumu this 24th day of June, 2013

**H.K.
JUDGE**

CHEMITEI

In the presence of:

.....for the applicant

.....for the respondent

HKC/va