



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL MISC. APPLICATION NO. 83 OF 2007

IN THE MATTER OF F.M.M

AND

IN THE MATTER OF:

(a) M.K 1 – MINOR

(b) M.K 2 – MINOR

AND

IN THE MATTER OF M.N APPLICANT

R U L I N G

In this matter a Chamber Summons was filed on 27th February 2007 as High Court Miscellaneous 14 of 2007 in Nairobi. It was filed under Section 3A of the Civil Procedure Act (Cap 21 Laws of Kenya).

The main prayer was that an order be given by the court directed to the Standard Chartered Bank Machakos Branch to issue cheques from the account of F.M.M (mother) to [name of school withheld] in reference of M.K 1 for Kshs.23,400/= and [name of school withheld] in reference of M.K 2 for 20,900/=, the same being school fees for the minors.

It was disclosed in the application that the said F.M.M who was the biological mother of the two children went missing from September 2006. It was also disclosed that in total, she had six (6) children, the last born at that time aged five (5) years and in Nursery School. The two children for whom payment of school fees was sought were the eldest children. It was further disclosed in the application that the husband of the deceased had died on 27th July 1998.

The file was later transferred to Machakos High Court, and the present file opened. The court thereafter ordered that Standard Chartered Bank Limited be served with the application. The application was fixed for hearing. After the court heard counsel for the Applicant, it ordered as follows:-

That an order be and is hereby directed to the Manager Standard Chartered Bank Machakos Branch to issue cheques from the account of F.M.M (mother) to (a) [name of school withheld] in reference to M.K 1 for Kshs.23,400/= (b) [name of school withheld], in reference of M.K 2 for Kshs.20,900/= the same being school fees for the minors herein.

From that time, no other application was filed. The present application was filed on 23rd November 2011. The main prayer reads as follows:-

(b) An order be issued directing the Manager Standard Chartered Bank Machakos Branch to issue

cheques from the account of F.M.M to the Applicants G.M.N in the following terms:-

- (i) Kshs.50,000 in reference to K.M 1 pursuing degree of Bachelor of Science at the University of Nairobi.**
- (ii) Kshs. 50,000/= in reference to K.N pursuing degree of Bachelor of Commerce at Kenyatta University.**

The application was brought under Section 3A of the Civil Procedure Act (Cap 21). It was filed with an affidavit sworn by G.M.N, described as a brother in law of F.M.M and the guardian and bread winner for the six (6) children of the said F.

Mr Ngugi for the Applicant also made submissions before me to support the application.

I have considered this application which was filed invoking the inherent powers of the court, to do justice in any particular case. It is unfortunate that the matter of the children disappeared. The two children have also progressed quite far up in their educational ladder. They passed their KCSE examinations very well and are now pursuing university education. I hope they will end up assisting their younger siblings in education and other spheres of life when they complete their studies.

I have considered the special and peculiar circumstances of this case. I am of the view that declining to grant the orders sought may be a disaster to the two children and the whole family.

Doing the best I can to balance the interests of all concerned and do justice, I am persuaded to exercise the court's discretion to facilitate the education of the two children. I repeat that the two children should stand up to assist their siblings once they complete their studies.

I therefore grant prayer (b) of the application, with the rider that the respective cheques will be issued by the bank in the name of the respective universities.

It is so ordered.

Dated and delivered at Machakos this 22nd day of **February** 2012.

George Dulu

Judge

Applicant and Counsel absent.