



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE 2554 OF 2009

IN THE MATTER OF THE ESTATE OF ANGELICA KANANU M'RENGINE – DECEASED

RULING

This application is brought by a Summons dated 28th February, 2012. The Applicant/Petitioner prays for the following orders-

1. That this honourable court do allow the payment of the following amounts for the purposes of school, college fees and maintenance as follows

- (i) Kshs. 95,350.00 being tuition at Nairobi Aviation College per semester**
- (ii) Kshs. 20,000 being transport and food related expenses per month.**
- (iii) Kshs. 10,000 per term electricity, water and college shopping.**

2. That this honourable court be pleased to order that the said amount be withdrawn from any or all the following accounts:

-National Bank of Kenya Account No. 0124-040354-00 - head office

3. That this honourable court be pleased to grant any further or other orders it deems fit and just.

4. That costs be in the cause.

The application is supported by the affidavit of the Petitioner himself, Jude Thaddeus Mugambi, and is based on the grounds that-

- (a) That the Petition for letters of administration intestate herein was filled on 8th December, 2009.**
- (b) That Jude Thaddeus Mugambi is the sole appointed next of kin of the deceased's estate and requires school fees urgently and the same should be paid from the deceased's estate**
- (c) That Jude Thaddeus Mugambi was solely dependent on the mother (deceased) on all his needs as she was a single parent and therefore since her demise he has endured untold suffering and needs to be maintained from the estate**
- (d) That the estate has sufficient means to pay Jude Thaddeus Mugambi's school fees and the**

maintenance.

In response, the objector, Amos Embugi Kambo filed a replying affidavit in which he deposes that he is the father of the daughter of the deceased and that since the death of the deceased, he has lived with the child. The said child was handed over to him by a family of the deceased and that even Jude Thaddeus Mugambi attended the handing over of the child.

At the hearing of the application, Mr. Muriuki appeared for the Petitioner and Mr. Omwenga for the objector. After considering the application and the rival submissions of counsel I wish to make it clear that this application is not a dispute as to paternity but relates to provision for a child of the deceased.

The fact that the Petitioner is a son of the deceased is not contested. He has lived throughout as a dependant of the deceased and is a beneficiary of the latter's estate. It would be unjust to deny him access to the funds of the deceased on which he has been accustomed to live. At the risk of posing a rhetorical question, if he cannot access such funds as those of his mother, how else can he survive?

I think that given the position of the Petitioner in this family as the next of kin on apportionment by the deceased, and being a beneficiary of the estate of the deceased, it is fair and proper that he should be granted the orders he seeks on condition that he will account to the estate in respect of the funds so accessed. This court has not only the power, but also the duty to make a reasonable provision in such a situation.

Being of that conviction and by reason of the foregoing, prayers 1 and 2 of the application by summons dated 28th February, 2012 are hereby granted as prayed.

Costs in the cause.

DATED and **DELIVERED** at **NAIROBI** this 19th day of July, 2012.

L. NJAGI
JUDGE