



**REPUBLIC OF KENYA**

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

**Succession Cause 2061 of 2010**

**IN THE MATTER OF THE ESTATE OF SARAH WAMBUI**

**MATHAI - (DECEASED)**

**RULING**

The application before the court is for confirmation of a grant of letters of administration intestate made in this matter to Rehema Wangui Mathai and Elsie Neema Mathai on 13<sup>th</sup> December, 2011. The application is dated 24<sup>th</sup> July, 2012 and is brought by summons for confirmation of grant taken out under **Section 71(3)** of the **Law of Succession Act** and **Rule 40(1)** of the **Probate and Administration Rules**.

The application is supported by the annexed affidavit of Rehema W. Mathai and Elsie N. Mathai, the Applicants herein, and is based on the grounds that it is over six months since the grant was made, and that the Applicants have identified, ascertained and determined the shares of all persons beneficially entitled to the deceased's estate.

*Prima facie*, the application satisfies the requirements for confirmation of the grant. However, Mr. Mboroki for the Caveator argued that on the face of it there were no consents to the mode of distribution, and that this was a mandatory requirement. With respect, this argument does not bear any weight since the only persons who would have consented to the mode of distribution are also the Applicants themselves. The only other interested party is a minor aged 14 years and therefore unqualified to consent.

The second point raised by Mr. Mboroki was that we are not told who would take care of the interests of the minor. However, I note from paragraph 4 of the supporting affidavit that the Applicants do acknowledge that their brother is a minor aged 14 years. They take a step further by emphasizing in paragraph 7 of the said affidavit that their said brother is a minor whose shares they will hold in trust until he attains the age of majority thereby acquiring capacity to hold his own shares.

For the time being, this ought to pacify the minor's uncle whom we are told would like to be assured that the child's share in cash, which will be used for his education, will be taken care of. The administratrixes have ears to hear with and having heard their uncle's concerns, they are put on notice. The fact that they will be operating under the watchful eyes of their uncle should dissuade them from misconducting themselves in any way. I have no reason to doubt their ability to rise to the occasion and take care of their minor sibling. Being of that persuasion, I see no reason why the grant should not be confirmed. I accordingly make the following orders-

- 1. The grant of letters of administration intestate made in this matter to REHEMA W. MATHAI and ELSIE N. MATHAI on 13<sup>th</sup> December, 2011 is hereby confirmed.**
- 2. The estate be shared in accordance with the agreed mode of distribution.**
- 3. Costs in the cause.**

**DATED and DELIVERED at NAIROBI this 17<sup>th</sup> day of October, 2012**

**L. NJAGI**  
**JUDGE**