



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL SUIT NUMBER 519 OF 2008**

NGUGI

**JOYCE WANGARI KAMAU & JOSEPH NDUNGU**

*(suing as the Administrators of the estate of  
SAMUEL KAMAU MACHARIA. ....)*

PLAINTIFF/APPLICANT

**VERSUS**

**STEPHEN MWANGI GICHUHI..... 1<sup>ST</sup> DEFENDANT/RESPONDENT**  
**BERNARD GATHURA MUAG..... 2<sup>ND</sup> DEFENDANT/RESPONDENT**

**R U L I N G**

Before me is a Notice of Motion dated 27<sup>th</sup> January, 2011 filed on behalf of the Plaintiffs/applicants who are administrators of the estate of the late Samuel Kamau Macharia. The applicants (administrators) are **JOYCE WANGARI KAMAU** and **JOSEPH NDUNGU NGUGI**. The respondents are named as **STEPHEN MWANGI GICHUHI** and **BERNARD GATHURA MUAGA**.

The application was brought under section 3A and 63 of the Civil Procedure Act (Cap 21 Laws of Kenya) and Order 32 Rule 6 as well as order 51 Rules 1 of the Civil Procedure Rules 2010. The prayers in the application are as follows: -

- 1. THAT this Honourable court be pleased to grant leave to the 1<sup>st</sup> plaintiff to receive the decretal amount on behalf of two minor beneficiaries, ANN WANJIRU KAMAU and ERIC KAMAU.**
- 2. THAT the decretal amount be apportioned as between the administrator JOYCE WANGARI KAMAU and the two minor beneficiaries ANN WANJIRU KAMAU and ERIC KAMAU in the ratio 30:70 after payment of their advocates fees and disbursements.**
- 3. THAT the decretal amounts in favour of the two minor beneficiaries ANNE WANJIRU KAMAU and ERIC KAMAU, be shared equally between them and deposited in their Kenya Post Office Savings Bank accounts of Account Numbers KAACJTA 0001913 and KAACJTA 0001905 respectively.**
- 4. THAT costs of this application be provided for.**

There are grounds on the face of the Notice of Motion. The application was filed with a supporting affidavit sworn on 28<sup>th</sup> January 2011 by **JOYCE WANGARI KAMAU**, one of the plaintiffs/applicants.

The application is partly opposed. A replying affidavit sworn on 16<sup>th</sup> February 2011 by Beatrice Ngatunyi advocate for the defendants/respondents was filed. It was deponed in the said affidavit that the payment of the portion of the wife of the late to her was proper. However, the two minors' share would in terms of Order 27 rule 10 (2) of the Civil Procedure Rules, have to be paid to the Public Trustee.

At the hearing of the application, Mr. Thimba appeared for the plaintiffs/applicants. Counsel contended that they would agree with the defendants' and that they would open separate interest earning accounts for the two Children. Ms Kamande for the defendants supported the proposed apportionment, but stated that the portion for the two minors' share be deposited in an interest earning account in the joint names of the Deputy Registrar and the mother of the minors, who is the first plaintiff/applicant.

Having considered the application, documents filed and submission, I will allow the application, subject to certain variations.

Under the provisions of Order 27 rule 10 of the Civil Procedure Rules 2010, the portion of the money for the minors is to be paid to the Public Trustee, unless the court directs otherwise. In any event, such money is to be used for the maintenance and education or otherwise for the benefit of the minors. The portion for the two children herein is proposed to be 70%, which I consider to be reasonable portion. Between them, each will get 35% of the decretal amount.

Considering the above, I will allow the application and order as follows: -

- 1. The decretal amount herein is apportioned between the administrator JOYCE WANGARI KAMAU and two minor beneficiaries ANN WANJIRU KAMAU and ERIC KAMAU. The administrator JOYCE WANGARI KAMAU will get 30% of the decretal sum. Each of the minor beneficiaries will get 35% of the decretal sum.***
- 2. The above apportionment will be paid after payment of their advocates fees, which if not agreed will be taxed.***
- 3. The portion for the administrator JOYCE WANGARI KAMAU will be released to her.***
- 4. The respective portions for the two minor beneficiaries will be paid to the Public Trustee who will invest and manage same in accordance with the law. Liberty to the Public Trustee to apply.***
- 5. Costs in the cause.***

Dated and delivered at Nairobi this 7<sup>th</sup> day of March 2011.

.....  
**GEORGE DULU**  
**JUDGE**

**In the Presence of**

Mr. Mbaluto holding brief for Mr. Thimba for applicant  
Ms Kamande for respondent  
C Muendo – court clerk