

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Succession Cause 107 of 2004

ANNAH KIRIMI MAGIRI 1ST PETITIONER
CATHERINE KATHURE NTEERE 2ND PETITIONER

RULING

What is before me is the Chamber Summons dated 13th January 2009. It is brought under Rule 73 of the Probate and Administration Rules. It is brought by Agnes Nguta Murithi (Agnes). The petition for letters of administration intestate was filed by Anna Karimi Magiri and Catherine Kathure Nteere. The petitioners are mother and sister of the deceased. There is pending before this court an application to revoke the grant issued to the petitioners. I will therefore not go into great detail on the merits of this case. Suffice it to say that there is evidence before court that the deceased was married to Agnes and they were blessed with one child called L.I.G. What Agnes seeks from this court is an order for the release of Kshs. 40,000/= to enable her take care of L, the child of the deceased. Agnes in support of her application stated that she is not employed and she requires the money to pay school fees for L at W Academy totaling Kshs. 35,900/=. The application is opposed by the petitioners on the basis that Agnes had obtained money from a Sacco belonging to the estate secretly. The petitioners also opposed the withdrawal of funds in piecemeal. When a child is involved in a matter, the interest to the child are always paramount. There is no doubt that the child L is in custody of Agnes. The interests of the child demands that consideration be given to the needs of the child to get education. Section 7 (1) of the Children's Act provides:-

“Every child shall be entitled to education.....”

Although that Section places the responsibility of providing that education on the government, I am of the view that since as a country we have not attained free education for all the interest of the child demand where possible, access to education be made available. It is for that reason that I accede to the summons dated 13th January 2009 but filed in court on 20th January 2010. I grant the following orders:-

1. ***I direct the public trustee to release to Agnes Nguta Murithi Kshs. 40,000/= from the funds held in respect of the estate of Erick Bundi Thurania, deceased.***
2. ***There shall be no orders as to costs to the Chamber Summons dated 13th January 2009.***

Dated and delivered at Meru this 4th day of June 2010.

MARY KASANGO
JUDGE