



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**

**Probate & Administration 187 of 2009**

**IN THE MATTER OF THE ESTATE OF TERESIA NJOKI MWANGI**

**RULING**

**Application for Confirmation of Grant**

I. Background:

1. The deceased is a female adult aged 45 years at the time of her demise on the 20<sup>th</sup> May 2009. She passed away at the Eldoret Hospital due to an increased intracranial pressure. She was a businesswoman by profession.
2. She left behind 2 minor sons aged 16 years old and 7 years old respectively.
3. Her widower Jonah Goodwin Kariuki Kaniu took out letters of grant intestate together with one Mary Wambui Nganga.
4. The grant was gazetted on the 16<sup>th</sup> October 2009 and temporary letters issued on 18<sup>th</sup> November 2007 (Mwilu J).
5. By application of 25<sup>th</sup> June 2010, the two administrators/administratrix applicants pray for Confirmation of grant.

II. Confirmation of grant intestate

6. This application is dated the 25<sup>th</sup> June 2010 and seeks for orders that all the assets be given to the widower. This

included the several plots and cash that was held in the bank.

7. According to the law a spouse of the deceased is to have the properties apportioned under Section 35 of the Law of Succession Act. This means that

- (i) All the personal and household effects of the deceased goes to the surviving spouse absolutely
- (ii) That a life interest on the whole residue of the net estate goes to that surviving spouse

8. The assets are not to be sold unless the Trust Act is complied with, namely the surviving spouse just comes to Court to seek leave of the Court under the Trustees' Act to sale or dispose of any assets.

9. Further, moneys in the account is to be invested in the name of the minors until they reach the age of accountability; which is normally 18 years to 25 years old.

### III. Opinion

10. In this Application, I note that there are two administratrix as required by Law. Section 58 of the Law of Succession requires there to be two administrators where the survivors are children. This has been complied with.

11. The reasons for this is that a continuing trust has been created, a trust having now been created.

12. It therefore means that for the duration of the minors the two administrators/ administration will be able to be trustees for the said minors.

13. The question now arises as to whether the widower was married to the deceased. It is clear under Kikuyu Customary Law that a child named after the father of the maternal couple would be a child not of the spouse. The first born minor's name is the same as the deceased. (noting that she never changed her maiden name). The second minor has the name of the first administrator. The administrator was able

to explain that the first born son was his biological son but was born before they were married. She named him after her mother's father whilst the second son was born after they were married.

14. This Court would have required the widower to disclose his age and avail to this Court a marriage certificate or identification to show he was married to the deceased. The widower stated he was 65 years old and married under Customary Law.

15. The said widower did inform this Court he had no other wife or family. That the deceased was his only wife.

16. The relationship of the administratrix was required to be disclosed. The administratrix informed this Court she was a neighbour and close friend.

17. Further the Court herein would make the following orders on the grounds that any person may act as administrator/administration. I am satisfied the applicants are capable.

18. The grant of letters of administration intestate be and is hereby confirmed on the following terms:

18.1. That all the assets herein are to be held in trust of the two minors. The widower is to have a life interest of the said assets.

18.2. I further order that the moneys in the following accounts be transferred to the Barclays Bank of Kenya Eldoret Branch fixed deposit in the name of Jonah Goodwin Kariuki Kaniu and Mary Wambui Ng'ang'a and the Registrar of the High Court of Kenya:-

(i) ABC Bank 0051000000 946

(ii) Equity Bank 0300190074398

(iii) Kenya Commercial Bank 1102234788

19. The above accounts are in the name of the deceased
20. The sum of these funds in the names of the deceased be consolidated and be put in a fixed deposit Barclays Bank Kenya Eldoret account until the minors attain the age of majority namely 18 years old.
21. That the interest on the said sum may be withdrawn and paid to the administrator and administratrix for the up keep of the minors maintenance and school fees. The other accounts to remain in the minors' names namely ABC 0051020011001, 0176,0051020010177, Cooperative bank 0110570466406, Cooperative 01105046626000.
22. The costs will be in the estate. The shares Kshs 43,000/= be paid to the widower.
23. There will be accounts filed within 6 months of today's date.

**Dated this 29<sup>th</sup> day of July 2010 at Eldoret.**

**M.A. ANG'AWA  
JUDGE**

**ORDER:**

The Further affidavits and accounts be returned to the makers for security purposes. That the same be availed at any time as required by this High Court.

**Dated this 29<sup>th</sup> day of July 2010 at Eldoret**

**M.A. ANG'AWA**  
**JUDGE**