



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT ELDORET

Prob & Admin Cause 268 of 2004

IN THE MATTER OF THE ESTATE OF THE LATE PAUL KIPSANG MENGECH

AND

**IN THE MATTER OF AN APPLICATION FOR REVOCATION AND ANNULMENT OF
GRANT**

BETWEEN

IRENE M.W.NDAMBUKI:.....OBJECTOR/APPLICANT

AND

TRUPHOSA C. MENGECH:.....1ST PETITIONER/RESPONDENT

PATRICK K. MENGECH.....2ND PETITIONER/RESPONDENT

REASONS FOR RULING

This is an application under the provisions of section 47 of the Law of Succession Act cap 160 and Rule 73 of the Probate and Administration Rules made there under. The Applicant who is the petitioner seeks the following orders from this court:-

(a) That the deceased's benefit at Nafaka Co-operative Savings and Credit Society Limited be and is hereby withdrawn and the cheques be made in favour of the following institutions:-

i. Daystar University for the sum of Kshs.286, 326/= being fees for Jacqueline Jepkoech Mengich for the years 2007 and 2008.

ii. University of Nairobi the sum of Kshs.59, 000/= being fees for Mengech Winnie J.

(b) Costs be provided for.

It is stated that the said children now need the aforesaid fees so that they can continue with their studies.

The application was opposed by the objector on inter alia the following grounds:-

Ø That the Applicant has not disclosed in her said application what amount if any is held by the Nafaka Co-operative savings and Credit Society Limited and the court cannot issue orders in vain based on no

evidence.

Ø That there are objection proceedings pending in this court in the form of an application for revocation and annulment of grant.

Ø That the basis of the objection is that she one of the widows of the deceased person married under a system of law that recognizes polygamy and that she was blessed with the following children who were housed, maintained, fed and educated by the deceased person:-

- i. Barnabas mengech - 28 years old
- ii. William Kiptoo Mengech - 16 years old
- iii. Beth Jebet - 14 years old

Ø That birth certificates and a letter from the chief showing that the said children were the deceased's children.

Ø That should the objection succeed she and her children will be equally entitled to the benefits due to her late husband and father just like the Applicant and her children and it would therefore not be in the interest of justice and fairness to make the orders sought before the objection is heard where the interest of minors is involved.

After hearing the application I reserved the ruling to be delivered on 3rd August,2007 which fell during the High Court vacation. Due to time constraints and pressure of work at the said time, the ruling was not ready and this court decided to give its decision and reserve the reason thereof to another date.

The decision I made were on the following terms:-

"I am satisfied that Jacqueline J. Mengech and Winnie J. Mengech are children of the deceased and dependants thereof. I do find that they are entitled to education to the best level the Estate can provide for them.

I have considered the pleadings of the petitioners on a prima facie basis, I find that their claims plausible and not frivolous. The petitioner's children's' rights do not depend on the marriage of their mother to the deceased. They would also be entitled to education.

On the basis of necessity and to ensure that the children of the deceased do obtain reasonable education, I do hereby order payment of Shs.143,163/= to Daystar University in favour of Jacqueline J. Mengech and Shs.29,550/= in favour of University of Nairobi in favour of Mengech Winnie J. This constitutes of 50% of the required fees for the two. They will have to source the balance from elsewhere. The balance of the funds shall remain with Nafaka Co-operative Savings and Credit Society Limited and shall not be paid without orders of this court. Liberty to apply is granted to the Objector costs in the case. The reasons be delivered in the new term on notice."

I now hereby give the reasons for the said decision and these are that:-

1. In her application for revocation and annulment of the grant and supporting affidavit sworn on 2nd March,2007, the objector recognizes that the First petitioner is a wife of the deceased who had the following children with the deceased:-

- 1) Patrick Mengech
- 2) Edward Mengech
- 3) Winnie mengech

4) Jacqueline Mengech.

2. The two children who are the subject matter herein are Winnie and Jacqueline.

3. The objector recognizes that the two children belong to the deceased.

4. The objector stated and recognized that all the children were dependants of the deceased and provided for all during his lifetime.

The court noted that the Estate is substantial having several immovable properties. So far the only money identified to belong to and available to the Estate was in the sum of Kshs.378, 689/= held with the deceased's former employer Nafaka Sacco Society Limited.

It is most likely that if the objector succeeds in the objection her children and herself would be entitled to a maximum of 50% of the said amount which works out to kshs.189, 344/50, all things be equally.

In the premises, considering the dire need of fees by the applicant's children, there is no reason to withhold their potential half share.

In the interest of fairness and justice and considering the necessity, the release of half of the fees due from each of the two children is justified and deserved. This works out to a total of shs.172, 713/= which is just under one half of the amount held. There is no prejudice to the objector and her children who would be entitled to such a consideration if the need arises in the future. That is why I gave her the liberty to apply. For the avoidance of doubt therefore, the petitioner shall not be entitled to make any future applications in respect of the balance which is to be held to the order of this court pending conclusion of the entire matter or on orders of the court in any event.

Dated and Delivered at Eldoret on this 19th day of March, 2008.

M.K. IBRAHIM

JUDGE