



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**Probate & Admin. Cause 289 of 2007**  
**IN THE MATTER OF THE ESTATE OF**  
**PHILIP KIPROP KIPTOO .....(DECEASED)**

**R U L I N G**

This is an application that the Honourable Court be pleased to order that

- (a) A sum of Kshs 226,172/= out of the deceased's account at Kenya Commercial Bank Limited, KCB , Uganda Road-Eldoret to M/S Strathmore University being the fees for the year 2008, two Semesters.
- (b) A further sum of Kshs 40,000/= be paid to the Applicant directly being the upkeep and pocket money for the entire academic year.
- (c) Costs, be provided for.

The application is supported by an affidavit sworn by the Applicant and on the following grounds:-

v The deceased prior to his death paid for the Applicant's School fees at St. Xavier's Primary School, Kapsabet Boys High School and later Strathmore University when he was undertaking his CPA Course.

(i) That since then, it has been difficult for the applicant to continue his studies and now that he has been admitted at the aforesaid University, it is imperative that the Estate be ordered to pay.

The application is opposed by the objector on the following grounds:-

v Upon the death of the deceased, the Estate paid the Applicant shs 120,000/= for purpose of paying and completing his CPA Course at Strathmore University.

v That the Applicant has not approached or told him that he needs to further his education in for university.

v That the request will place a heavy strain on the limited estate of the deceased which must see 5 other children through school.

I have considered the application before me, the replying affidavits, and submissions by Counsel. I have also taken into account the previous application by the Objector and orders made.

The deceased had two bank accounts which are:-

1. Kenya Commercial Bank account No. 170250798 which had sum of shs 1,160,536.95 as at 28/3/2007.
2. Family Bank Account No. 858963-101 – 08538 which had shs 48,875.

Upon an application by the Objector, this Court ordered the release of a sum of Kshs 89,791 to various schools being school fees for 5 children of the deceased with the Objector.

The Petitioner is a son of the deceased from a previous relationship. He is now an adult and holds Certified Public Accountant's Certificate. He has enrolled for a University Degree at the aforesaid university.

I have noted that the deceased's other children are 5 in number. Three are girls in Secondary Schools and two are boys in Primary Schools. The said children are of ages between 10 – 16 years.

The value of the assets of the Estate have not been ascertained. The Estate owns various properties which appear to be in the possession and control of the Objector. There are various benefits expected from his ex-employers and pension schemes.

The Objector claims that she receives rents in the sum of shs 38,847.50 per month while the Children's and her needs are shs 67,000/= per month.

The Applicant is a biological son of the deceased and it is clear that his father would have wished to educate him up to university level. This Court takes into cognizance the Status of the Strathmore University. One must have achieved good marks to be admitted at the University. The Applicant is a brother of the Objector's children and so far there are no serious differences. There are chances that the Applicant if he completes his course will not abandon his siblings and that he will assist them in the future. He should not be made to lose this rare opportunity. The objector has not disclosed fully about the use put to the other properties in Kipkabus which appear to be agricultural.

I also note that the accounts will not be depleted by this single payment. It still holds sufficient funds for school fees for a couple of years for the minor children. There is all chances that the terminal benefits will be paid before the next academic year.

This Court will tread carefully in balancing all the children's rights and apportioning the funds.

I do hereby grant prayers (b) and (c) of the application dated 26<sup>th</sup> June, 2008. The cheque for shs 226,172/= be issued in favour of the Strathmore University and a sum of shs 40,000/= to the Applicant directly. This Court shall henceforth give priority to the educational needs of the minor children when apportioning the balance of the monies in the account.

Costs in the course. Orders accordingly.

DATED AND DELIVERED AT ELDORET ON THIS 28<sup>TH</sup> DAY OF JULY, 2008.

**M.K. IBRAHIM,**

**JUDGE.**

In the presence of :

Mr. Birir holding brief for Tuiyot for the Respondent

Mr. Kathili for the Applicant.