



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI(MILIMANI COMMERCIAL COURTS)

SUCCESSION CAUSE 2855 OF 2005

IN THE MATTER OF THE ESTATE OF JACKSON KAMAU – DECEASED

JUNE NDUTA KINYUA.APPLICANT

AND

ERNEST KINYUA KAMAU.1ST RESPONDENT

HON. JAMES NJENGA KARUME.2ND RESPONDENT

R U L I N G

The application before the court is dated 26.4.2007. It seeks various reliefs of which the presently relevant one is prayer 2 and 6. The other prayers therein have either been dealt with or dropped.

Prayer 2 states: -

“That, the Honourable Court does order the respondents to immediately provide the applicant, out of the estate of the deceased herein, the sum of U. K. £6887.”

The applicant who is a student in the University of Buckingham in the United Kingdom, is a recognized beneficiary among others, in relation to the estate of Jackson Kamau Chege – deceased. The two respondents, apart from the first one being the applicant’s father, are the Executors and/or Trustees of the estate of the deceased which conservatively is estimated at 3 billion Kenya shillings. The Will of the deceased provided specifically that his grandchildren, who included the applicant, must not want anything including education, medical and general upkeep. It was not in dispute therefore, that the applicant June Nduta Chege, was entitled to all relevant and necessary payments for the attainment of her education in Buckingham University.

The applicant’s case before me was that she was under obligation to pay to the University of Buckingham a total sum of U.K. £24976 of which £18339 had been paid by the time she filed this application leaving

unpaid balance of £6637. The basis of the application was therefore that this court orders the trustees of the estate of the late Jackson Kamau Chege, to pay forthwith the said balance.

The two counsel, Mr. Kipkorir and Mr. Miller, representing the two sides, spent all their time before me arguing using many figures and numbers to prove or disprove the said figure of £6637.

In my opinion the many figures which were used with a lot of dexterity, almost concealed the simple issues involved in the whole matter. Both parties referred to various correspondences between the University of Buckingham and Ernest Kinyua Kamau, the 1st trustee who appeared to take active administration of the estate.

The first most relevant correspondence is exhibit JNK 4. It shows that the applicant, in her first year of 5 terms, required as tuition, accommodation and maintenance for the applicant, a total sum of £24976. The letter which was clearly written after the applicant had already joined the University confirmed that the University had received £18339 of the £24976 required. The University had then paid £1600 to the applicant and retained £16739 in applicant's account with the University. The balance outstanding after receiving the £18339 was £6637, which in this application is the relevant sum required by the applicant to be ordered provided for her use.

It is to be noted that as the application pended some funds were later paid to the University of Buckingham as well as to the applicant. By a cheque dated 10.5.2007 marked exhibits EKK 8, a sum of £3175 was paid to the applicant as part of maintenance. Another cheque of £1470 of the same date was paid direct to the University as part of tuition and/or accommodation for the applicant. The second sum later paid by the respondents both to the University and to the applicant was £4645. The balance which would still remain unpaid from the original total sum of £24976 required to be paid to the University would simply be £1992 which unless it was later remitted to the University, would now be outstanding.

The matter is not, however, that simple. This is because the applicant argued, and the respondent did not dispute it, that tuition and accommodation, was directly payable to the University while maintenance was payable direct to the applicant. This would take us back to Exhibit **JNK4** which is a letter or document from the University of Buckingham's tabulation of fees and other sums due to the University. It is showing what had been received and how it had been used. The communication confirms that while the sum of £18339 had been received only £1600 had been paid to the applicant as maintenance because the 1st respondent, in his wisdom, had instructed so.

I have carefully perused the arguments advanced by both sides as to how the sums of money paid through the University would be divided. I came to the conclusion and it was the common position of the parties that all maintenance whether paid direct to the applicant or paid to her through the University, was eventually mandatorily payable to her.

The said exhibit **JNK4** also confirmed the view that the total maintenance due and payable to the applicant was £7500 of which she had received £1600 in June 2006. Since she also received £3175 under exhibit **EKK8** in May 2007, the total sum received by her, totaled £4775, leaving a balance of £2725 still due and payable to the applicant.

The above conclusion would not go well with Mr. Miller's Respondents' submission which embraced the view that any unaccounted sum paid to the University of Buckingham on the general account of the applicant, should be or must have been released to the applicant. In this respect Mr. Miller had argued that a possible sum of £2630 of the total sum of £18976 paid to the University was not accounted for and was still unused. While at first Mr. Miller was slow in asserting that the sum of £2630 had been given to the applicant, he at the end of his submissions firmly stated that the amount should be added to the sum of £1600 received by the applicant and £1470 lately paid to the University. In other words, to Mr. Miller, it made no difference whether the amount of £2630 was still with the University and not with the applicant. He curiously concluded by asserting that the £2630 was an excess which should be added to £1470 to make it £4100 which the applicant could use as "excess" at her leisure. To this possible sum of £4100 Mr. Miller happily added £1500 being part of the £3175 lately paid to the applicant and termed it "extra"

maintenance amount.

Unfortunately, Mr. Miller did not care to explain to the court if and when his clients may have reversed their instructions of June 2006 to the University not to pay the applicant more than £1600. Indeed, this court is of the view that the Respondents have never reversed their such instructions. This means that if there was an overpayment to the University of £2630 aforesaid or any other sum, then the said sum still lies with the University and has never been availed to the applicant. It is on this basis that the court could not fault Mr. Kipkorir when the latter at the end of his submissions retorted that his client is not interested in the said sum, which he then invited the Respondents to collect from the University of Buckingham, if indeed the amount is still lying there.

On the other hand it may not need a genius to see that the total sum paid to the University of Buckingham and to the applicant in terms of tuition, accommodation and maintenance was £18339 in June 2006 and £4645 in May 2007, making it a total of £22984 instead of the required £24976, plus £1000 referred to as refundable bond. The balance therefore still generally due from the respondents, to clear the outstanding amount in relation to tuition, accommodation and maintenance would be £2992 for the first year.

In conclusion therefore, the applicant's application has merit and would be allowed in the following terms.

ORDER

- 1) The Respondents shall forthwith pay to the applicant a balance of maintenance calculated to be £2725 for the 1st year.
- 2) The Respondents are at liberty to seek refund from Birmingham University of extra payment, if any, which may be lying in the applicant's account with the University.
- 3) Maintenance allowance due to the applicant for the 2nd and other years in the Birmingham University shall be paid directly to the applicant and not through the University.
- 4) Costs are to the applicant, to be taxed or agreed upon, in any event.

Dated and delivered at Nairobi this 21 day of November 2007

.....

D A ONYANCHA

JUDGE