



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
SUCCESSION CAUSE NO. 222 OF 1997

**IN THE MATTER OF THE ESTATE OF DANIEL KIMINING SIRGOI
(DECEASED)**

RULING

I have considered the application by way of Chamber Summons dated 16th July 2004 anxiously. It was brought under rules 49 and 73 of the Probate and Administration Rules. It seeks for two orders as follows:

(i) That the court be pleased to make provisions for the education of Prexedece Jemurgor and Kennedy Kipchirchir the issues of the deceased's marriage from the estate of the deceased pending the grant of full administration.

(ii) That the court be pleased to order the release of Kshs.28,500/- from Barclays Bank of Kenya Limited Account No.4666563 currently held in the name of Evaline Jepleting Chumo deceased to cater for school fees and upkeep of the children of the deceased who are now orphans.

The application is supported by an affidavit sworn by James Chamsen Kogo. He depones that he is a co-administrator of the estate of Daniel Kimining Sirgoi and the guardian of the children of the late Daniel Kimining Sirgoi and the late Evaline Chumo. That the children are facing financial challenges. The deponent, who is the father of the late Daniel Kimining Chumo, is old and he seeks orders to withdraw Kshs.28,500/= from Barclays Bank Kenya Limited for fees and upkeep of the children. The application was filed under certificate of urgency. There is a further affidavit sworn by Samuel Kimeli Katam as a coadministrator on 10th August 2004 supporting the request for withdrawal of money from the bank and also stating that the children of the deceased are staying on a plot which has an outstanding payment of Kshs.50,000/= and the seller is now threatening eviction unless the amount is paid.

As there are disclosed five beneficiaries who are minors, I ordered that the administrators provide information on the proposed mode of distribution before I can consider granting any orders for payments out, in order to safeguard the interests of all the minors. By an affidavit sworn on 31st January 2005 by Samuel Kimeli Katam, the following information was deponed to –

That the deceased persons left five children

- 1. P J born in 1984 had eloped with a man.**
- 2. K K born in 1986 is in Form II.**
- 3. D.C. born in 1988 is in Standard 8.**
- 4. L.J. born in 1990 is in Standard 8.**

5. R.K. born in 1994 is now in Standard 4.

It was also deponed that Praxedede droppped out of school last year and eloped with a man. That Kennedy Kipchirchir requires Kshs.23,000/= for fees urgently and is in danger of dropping out of school. That Dorothy Cherop and Lucy Jelimo are in standard 8 and require funds for books, uniforms, upkeep and registration for KCPE totaling kshs.10,000/=. That Robert Kibiwott requires money for upkeep, school uniforms and books totaling Kshs.4,000/= for the year. The net worth of the estate was however not disclosed in the affidavit. The same deponent Samuel Kimeli Katam also swore an affidavit on 12th March 2005 proposing that ½ of the funds should go to Kennedy Kipchirchir and Dorothy Cherop, while the remaining 2/3 be shared equally among Lucy Jelimo and Robert Kibiwott.

I must first of all state that this application relates to the estate of the late David Kimining Sirgoi and not his late wife Evaline J. Chumo. I have perused the documents annexed such as the birth certificates of the children who have been mentioned herein.

The petition which was filed in court on 10th September 1997 was in respect of the estate of Sirgoi. It was filed by the petitioner Everlyne Chumo, as his wife. On the 15th January 1998 the court granted letters of administration of the estate of the late Daniel Kimining Sirgoi to Everlyne Chumo. The death certificate also shows the same name of Daniel Kimining Sirgoi. The death certificate of the person who was appointed as administrator of the estate also reads Evaline Jepleting Chumo. Death was registered on 17th July 2003. The marriage certificate issued on 5th October 1985 gives the names of the couple as Daniel Kimining A. Sirgoi, and Everlyne Jepleting. However the birth certificates of the children have the names of parents as Daniel Sirgoi Kogo and Everlyne Chepleting Chumo except the birth certificate of Robert Kibiwott born on 14th June 1994 which shows the names of the parents as Daniel Kimining Sirgoi and Evelyn Jeplering Sirgoi.

In my view the differences of the names of the parents especially the deceased father of the children are quite significant and material and should have been explained. In order to clear any doubts as to the identify of the parents, I direct that the co-administrators swear affidavits to clarify the variation of the names of both deceased parents.

Coming now to the merits of the application, I decline to grant the orders sought in the application. There appears to be a mix up of two estates in the application. Annexure "JC3" is a letter dated 17th March 1998 enclosing a cheque for Kshs.193,213.90 payable to the Public Trustee on account of death gratuity for Daniel Kimining Sirgoi. That was part of his estate and it was paid to the Public Trustee at Eldoret. There is also a letter to Evelyne Chumo from the Director of Pensions for payment to her of dependants pensions for five years from 8th October 1996. The dependants pension is payable to a dependant, and does not form part of the deceased employee's estate. Therefore the dependants pension paid to Barclays Bank Eldoret for the account of Evelyn J. Chumo as wife of Daniel Kimining Sirgoi, does not form part of the latter's estate. This appears to be the amount in Barclays Bank that the application for payment out is based on, as evidenced in paragraph 5 of the supporting affidavit which depones as follows: -

"5. That I am aware that Evaline Jepleting Chumo had an account No.4666563 where the pension of her late husband is paid his pensioner (annexed is a letter from the Director of Pensions marked "JC3")

In my view, as the dependant's pension does not form part of the estate of Daniel Sirgoi, it cannot be paid out in his succession cause. It can only be dealt with in the succession cause of Evaline J. Chumo. For this reason, I dismiss the application and decline to grant the orders sought.

I order as follows: -

1. That the co-administrators do urgently file summons for confirmation of grant of letters of administration for the estate of the late Daniel Kimining Sirgoi, together with consent for confirmation of grant and consent for mode of distribution, signed by all adult survivors.

2. That the co-administrators file affidavits clarifying the variation of names of parents of the children, as appears in various documents.

3. That the registry should give a hearing date for the confirmation of grant on priority basis.

Dated and Delivered at Eldoret this 9th Day of May 2005

George Dulu

Ag. Judge