



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
SUCCESSION CAUSE NO.271 OF 2001**

IN THE MATTER OF THE ESTATE OF WINSTONE ONYANGO

ORWENYO DECEASED

BETWEEN

MARTHA KEMUMA ONYANGO PETITIONER/APPLICANT

MONICA KERUBO MOGIRE OBJECTOR/RESPONDENT

RULING:

I have carefully considered the application and the objection thereto. I find the application is merited. There is no dispute that Teresa Nyabonyi Onyango is a daughter of the deceased WINSTONE ONYANGO ORWENYO. This is so shown in form P & A5 filled on 12/11/01.

Further it is not denied by the Objector that she is now a student at Nyabururu Girls High School. The objector even entered a consent order last year for her school fees. What is now being applied for is for an order that fees be paid from the deceased's account. I would not call that plundering the estate of the deceased. I believe even the objector would want to see the child finish her schooling.

Schools have already opened and court was told the child has already been sent home. One therefore cannot say the application is premature or not urgent. The student cannot stay at home until directions are taken.

The issue of the applicant swearing affidavit to show the inventory of the assets of the estate is not necessary as form P&A 5 was filled on 12/11/01 and it clearly shows the assets of the deceased. The net value is given at shs.2.5 million.

The application prays for mere shs.45,000/=. One cannot say that that is providing for one heir at the expense of the other heirs.

Counsel for objector told court that circumstances have changed since last year when they entered a consent to provide for the same dependants. I was not told how they have changed. I however feel that the only circumstances that have changed is that the dependant is joining form Two and not form one.

All in all I find application is reasonable. The same allowed as prayed. Costs in the cause.

KABURU BAUNI

JUDGE

9/2/04

Signed, dated and delivered on 9/2/04. Mr. Ondika holding brief for Mr. Oguttu for applicant. No appearance for the objector.

KABURU BAUNI

JUDGE

1/3/04

Bauni J

Order: Application dated 26/2/04 certified urgent.

KABURU BAUNI

JUDGE

1/3/04

4/3/04

Bauni J

CC – Obino

Mr. Oguttu for applicant

Mr. Oguttu: I am for applicant. Our application is for the court's order issued on 9/2/04 to be changed to reduce the amount ordered of shs.45,000/= to shs.38,000/=. There is a

supporting affidavit.

KABURU BAUNI

JUDGE

Court: I have gone through the application. It's reasonable and not prejudicial to the respondent. The application is allowed as prayed. The cheque of shs.38,000/= be made in the name of the school – NYABURURU GIRLS' HIGH SCHOOL.

KABURU BAUNI

JUDGE