



REPUBLIC OF KENYA



**In re Estate of Eliud Murugu Njuguna - (Deceased) (Succession Cause 775 of 2018) [2025] KEHC 1496 (KLR) (Family) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1496 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 775 OF 2018  
SN RIECHI, J  
FEBRUARY 13, 2025  
IN THE MATTER OF THE ESTATE OF EMN - (DECEASED)**

**RULING**

1. This is an application dated December 17, 2024 by Victoria Mwikali widow of the deceased Eliud Njuguna Murugu and Co-administratrix of his estate jointly with Stanley Maina Njuguna, Lilian Njeri Njehia and Ivy Sarah Wambui Njuguna as co-administrators; On 17.9.2018 the widow seeks the following orders:
  1. That the Honourable court be pleased to order that an equivalent of GBP 12,225/- be paid out of the estate of: Eliud Murugu Njuguna to cater for the outstanding balance and tuition fees for ANM.
  2. That the Honourable Court be pleased to order that an equivalent of EUR 5,500 be paid out of the estate of Eliud Murugu Njuguna to cater for the outstanding fees balance and tuition fees for RI.
  3. That the Honourable court be pleased to order that an equivalent of Ksh. 3,858,100/- be paid out of the estate of Eliud Murugu Njuguna To Cater For The Outstanding Fees Balance And Tuition Fees For JNWN And JBN.
2. The Grounds for the Application are:
  - (a) That ANM, RI, JNWN & JBN are beneficiaries of the deceased's estate by virtue of being the deceased's children.
  - (b) That prior to his demise, the deceased was maintaining and paying their school fees.
  - (c) That Andrew Njuguna is a third year student at the University of Sheffield, RI is a first year student at IE University and JWN and JBN are both pupils at Rusinga School.
  - (d) That Andrew Njuguna's annual tuition fees which has become due amounts to GBP 12,225/-



- (e) That RI's outstanding fees is EL JR 2,750 and further requires tuition fees for the 2025 semester amounting to EUR 5,500 totaling to 3,858,100 EUR 5,500/-
  - (f) That JWN and JBN's outstanding fee balance is Kshs.3,858,100/=.
  - (g) That having no source of income the Applicant is unable to meet these obligations for the children in addition to providing for their upkeep.
  - (h) That the estate is still far from being distributed and the children stand to be discontinued from their respective classes should they not meet their school fees obligations.
  - (i) That the Applicant and the children were entirely dependent on the deceased at the time he was alive and as such he fully catered for all their expenses.
  - (j) That the Applicant now urgently needs the funds to pay the outstanding tuition fees.
  - (k) That the Applicant is aware that there are funds in her late husband's various accounts and that the same can be used to pay for the children's outstanding fee balances.
  - (l) That the Applicant and the children are primary dependents of the estate and no prejudice will be occasioned from paying the outstanding fee balances.
  - (m) That it is in the interests of justice that the Orders sought should be granted.
3. Briefly the deceased Eliud Njuguna Murugi died on 23rd of January 2018 intestate on grant of letters of administrators were issued to;
- 1. Victoria Mwikali
  - 2. Stanley Maina Njuguna
  - 3. Lilian Njeri Njehia
  - 4. Ivy Sarah Wambui Njuguna
4. After several applications and hearings on who the beneficiaries of the estate are which included evidence of DNA, it is now settled that the beneficiaries of the estate as follows:
- 1. Victoria Mwikali Joseph - Wife
  - 2. Ivy Sarah Wambui Njuguna - Daughter
  - 3. ANM - Son
  - 4. RI Njunguna - Daughter
  - 5. JNWN-daughter
  - 6. JB Wakaba Njuguna- Son
  - 7. John Morris Waithaka - Son
  - 8. Steve Collins Roo Murugu - Son
  - 9. Clancy Wambue - Daughter
  - 10. Steve Zawadi - Son
  - 11. Elsa Gathoni – Daughter



12. Norbert Mokura – Son
  13. Fulbert Kamau - Son
  14. Eyal Kiprotich – Son
  15. Francis Iganjo – Son
  16. Kevin Wairua Njuguna – Son
5. Victoria Mwikali the only widow has the following children:
1. JN
  2. JB
6. The widow was also under her care and 2 children of the deceased whose mother had pre-deceased Eliud. At the time of death of deceased on 23<sup>rd</sup> of January 2018 they were staying with them. They are;
1. RI – currently a student in I E University Spain.
  2. ANM who is a student at the University of Sheffield – United Kingdom
7. M/s Kayigira for Stanley Maina Njuguna, Lillian Njeri and Ivy Sarah Wahome (Administrators) opposed the applications. She stated that the total amount of money sought by the applicant is the equivalent of Ksh.6,552,777 and yet the estate has only Ksh.11million in the account. There is an expected expenditure of Ksh.5 million to prepare titles for the estate. Mr. Bogonko for Beatrice Wanjiru proposed that each child should be given Ksh.600,000 as school fees as they are also in school.
8. Mr. Ogembo opposed the application stating that none of the other beneficiaries have sought school fees and the present request should await confirmation of grant. Mr. Munawa reiterated the sentiments of his colleagues and proposed that if the application is granted then the sums should be distributed equally among all the beneficiaries. M/s Maina for Linda Muthoni stated that she concurred with her colleagues in objections to the granting of prayers in the application as doing so would open flood gates.
9. Mr. Masai opposed the application and urged that the applicant await confirmation.
10. M/s Machio suggested that the matter do await distribution and that this application be rejected. Mr. Mkaburi stated that the application will be unfair to the other beneficiaries. Mr. Mbasi for applicant in reply stated that a similar request was made on 18.12.2023 and urged that other beneficiaries who need school fees can file application on a need basis. He stated that the estate has a rental income of Ksh.500,000/- per month and any of the beneficiaries can file their applications for school fees on a need basis.
11. This court directed Mr. Mbaji and M/s Kayigira Counsel for Administrators to confirm funds in the account of the estate on 29/1/2025 they confirmed that;
1. Estate has bank balance of Ksh.17,250,455
  2. Expected expenses for conveying of titles Ksh.421,000,700/-
  3. That Ksh.2,701,254 was paid to:
    - a. EK
    - b. KMN
    - c. FI



had not been paid as directed by Court on 24<sup>th</sup> January, 2025.

12. The present application is for payment of school fees for the 3 beneficiaries who are in school and undertaking study. This application has been necessitated by the fact that this succession cause which was registered in 2018 and grant issued on 17.9.2018 has not been completed.- 6 years since. The Counsels for the respondents oppose the application on the grounds that the issue of school fees should await the distribution of the estate or in the alternative funds be distributed to the other beneficiaries who are also school going.
13. In the application the applicant has set out the following beneficiaries who are in need of school fees;
  - i. ANM
  - ii. RI,
  - iii. JNWN
  - iv. JBN
14. The above beneficiaries have the following outstanding fees;
  1. Andrew Njuguna is a student at the University of Sheffield undertaking a course in Engineering. The course requires a self-sponsored payment of GBP 12,225/= which has become due to cater for his tuition fees. In support the applicant has attached to the application a copy of fees in voice marked VMJ-2.
  2. RIN is a student at IE University . The beneficiary outstanding fees is EUR 2,750 and she needs further tuition fees for the year 2025 semester amounting to EUR.2,750 totalling to EUR 5,500/= course she is undertaking requires a payment of EUR 5,500 to cater for her tuition fees. The applicant in support has attached a copy of fees invoice marked VMJ-3.
  3. JNWN and JBN are students at Rusinga school where they are undertaking their studies. The total outstanding fees due to Rusinga school is a sum total of KES, 3,858,100=/.The applicant in support has attached a copy of fees invoice marked VMJ-4.
15. The applicant has stated further that if the outstanding fees balances aforesaid are not immediately paid, the children of the Deceased aforesaid will be deregistered from their classes.



No.	Name Of Student	Institution	Amount To Be Paid	Account Number
1	ANM	University Of Sheffield	Gbo 12,225 For Tution Fees	Not Provided
2	RIN	Ie University	Eur 5,500 Per Year	Account Name:ie Universidad Account Number: Iban Ess3201822329910201509494 B.c:bbvaesmmxxx Payment Concept 1260866-RIN
3	JNWN & JBN	Rusinga School	Outstanding Fees For Both Students Is Kshs.3,858,100/ =	Account Name: Rusinga Investments Limited Absa Bank-hurlingham Branch A/ c :045134XXXX(kshs) Account Name;rusinga Investmentss Limited Co-operative Bank-lavington Mall A/C NO:01192650XXXX00

16. The applicant has annexed documents and invoices of school fees demand for:

1. ANM – University of Sheffield –
2. RI – I.E University
3. JWN – Rusinga School.
4. JBN – Rusinga School.



17. There is no contention that these children are in schools indicated and taking studies therein. There is no evidence that the fees requested in the application is not outstanding. There is also no dispute that's the deceased when alive was paying the school fees and that if he was alive he would not pay the fees. The contention by the Counsel for the other beneficiaries is that the school fees should not be paid from the estate of the deceased for these children until distribution and this Succession cause is completed. By extension that the children should halt the learning until this Succession is completed. Article 53 (1) (a) of the Constitution of Kenya 2010 provides that every child has the right to a name and nationality from birth; and under Article 53 (2), a child's best interests are of paramount importance in every matter concerning the child.
18. This legal requirement to give paramountcy to the best interest of the child in all actions concerning the child is repeated in Section 8 of the Children's Act, 2022 which provides that:
- (2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
  - (3) All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to—
    - (a) safeguard and promote the rights and welfare of the child;
    - (b) conserve and promote the welfare of the child;
    - (c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.
19. The same legal requirements are found under Article 4 of the African Charter on the Rights and Welfare of the Child and Article 3 of the United Nations Convention on the Rights of the Child. What are the best interests of the child? To answer this question it is my view that the best interests of the child includes but is not limited to the following:
- a. Right to a name.
  - b. Right to nationality.
  - c. Right to identity.
  - d. Right to parental care.
  - e. ....
20. Education and proper guidance, etc. The children herein have a right to education.
21. Delay in the payment of fees for the children cannot in my view be in the best interest of the child which is protected both by Constitution and the Children Act.
22. The 2<sup>nd</sup> grounds of objection raised by Counsel for other beneficiaries is that if the court is inclined to grant the application, then it should provide for payment of fees to other beneficiaries. This court will only consider application before it. It cannot speculate on what other beneficiaries would want. If there is any beneficiary who require school fees, he should make such application to court and it will be considered on its merits. I note from the bank balances that were tendered to court by Consent by Counsel for the Administrators that the estate has funds totaling to Ksh.17,250,455.



23. After considering the applicant and the responses by Counsel for the other beneficiaries, I find that deceased left under the care of applicant widow the following children:
1. ANM
  2. RI
  3. JWN
  4. JBN
24. I also find that the children are school going and fees is due. I therefore order as follows:
1. JN
  2. RI
  3. JW
  4. JBN
25. The administrators pay into accounts for:
1. ANM – University of Sheffield - GBO 12,225/- Tuition fees.
  2. RIN – IE University – EUR 5,500
  3. JNWN & JBN - Rusinga School Outstanding Fees for both Students is Ksh.3,858,100
26. The administrators also pay School fees directly to the institutions' accounts for:
1. EK Ksh.900,418.86
  2. KWN Ksh. 900,418.86
  3. FI Ksh.900,418.86 as directed by the court on 24/1/2025.

**DATED AT NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025**

**S. N. RIECHI**

**JUDGE**

