



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of George Mwangi Karoki (Deceased) (Succession Cause E027 of 2024) [2025] KEHC 1952 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1952 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
SUCCESSION CAUSE E027 OF 2024**

**FN MUCHEMI, J**

**FEBRUARY 6, 2025**

**IN THE MATTER OF THE ESTATE OF GMK (DECEASED)**

**IN THE MATTER OF**

**MWK ..... 1<sup>ST</sup> PETITIONER**

**BWK ..... 2<sup>ND</sup> PETITIONER**

**RULING**

**Brief Facts**

1. The application for determination is dated 27<sup>th</sup> November 2024 seeks for orders to grant the administrators access and withdraw of funds Kshs. 422,430/- from Kenya Commercial Bank Account No. 1129XXXXXX to pay school fees for the beneficiaries.
2. The applicants state that they are the widow and daughter of the late GMK respectively who died on 5<sup>th</sup> October 2024. The petitioners further state that the deceased used to pay school fees for the children.
3. It is further deposed that the applicants have applied for grant of representation dated 19<sup>th</sup> November 2024 which is likely to take time for the full grant to be issued and confirmed. It is argued that there are three of the deceased's beneficiaries namely DWK, KWK and DMK who require school fees to be paid in the first week of January 2025. The administrators aver that DWK is a 1<sup>st</sup> year law student at the University of Nairobi and she is required to pay Kshs. 116,750/- when school re-opens in the 1<sup>st</sup> week of January 2025, KWK is required to pay Kshs. 58,680/- on or before 8<sup>th</sup> January 2025 and DMK, a grade six pupil at [particulars withheld] Academy is required to pay Kshs. 47,000/- inclusive of transport on or before 7<sup>th</sup> January 2025. In total, the three beneficiaries are required to pay Kshs. 222,430/- as school fees. Further, the administrators state that they require school related expenses for the beneficiaries which will amount to Kshs. 200,000/-
4. The applicants aver that the deceased's account in Kenya Commercial Bank Account No. 1129XXXXXX has sufficient funds to cater for the aforementioned expenses. As such, the applicants



urge the court to allow them to withdraw Kshs. 422,430/- from the bank account to keep the beneficiaries in school pending the issuance of the full grant.

### **The Law**

5. The applicants rely on Rule 36 of the *Probate and Administration Rules* which provides for a limited grant of letters of administration ad colligenda bona for purposes of collecting and preservation of the estate. It provides:-
  - 1) “Where owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defuncti; of the estate of the deceased”.
  - 2) Every such grant shall be in Form 47 and be expressly limited for the purpose only of allocating and getting in an receiving the estate and until a further grant is made.
6. In the instant application, the applicants primarily seek grant of letters ad colligenda bona in order to access funds from the deceased’s account held at KCB Account No. 1129XXXXXX for purposes of paying school fees and school fees related expenses for her three children.
7. The provision is very clear that an order for colligenda bona defuncti, can only be made for purpose of collecting, receiving and getting in of the estate of the deceased with a view of preserving such estate. In my view, the payment of school fees for deceased’s or for any other children is not provided for under Rule 36. Furthermore, it is not in the interests of preservation of the estate to withdraw funds from the bank account of the deceased. The provision is meant to preserve and collect the estate of the deceased together.
8. It is important to note this petition was filed in this court on 27/1/2024 and is yet to be gazetted. As such, there is no administrator for the estate of the deceased as yet since the petition has just been filed. As such, there is no legal person who can be held responsible for administration of the estate.
9. In my view, granting orders sought in this application is tantamount to encouraging acts of intermeddling with the estate which a court of law should not allow or even encourage.
10. It is my considered view that the applicant has failed to demonstrate that this application passes the test of Rule 36 of the *Probate and Administration Rules*.
11. I find no merit in this application and it is hereby dismissed.
12. There shall be no order as to costs this being a family matter.
13. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 6<sup>TH</sup> DAY OF FEBRUARY 2025.**

**F. MUCHEMI  
JUDGE**

