



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Wilson Waithaka Wainaina (Deceased) (Probate & Administration E014 of 2025) [2025] KEHC 9936 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9936 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
PROBATE & ADMINISTRATION E014 OF 2025**

FN MUCHEMI, J

JULY 3, 2025

RULING

1. This is a petition for special grant dated 29th April 2025 seeking for orders of grant for letters of administration in respect of the estate of the deceased to access the deceased's bank account in Family Bank account number 005000005119 at Thika Branch for purposes of paying school fees, education expenses, medical and maintenance costs.
2. The petition is an exparte one.

The Applicant's case

3. The applicant states that deceased was survived by two widows namely Lydia Waithigeni Wahome, the first wife and herself as the second wife. The applicant further states that the deceased and the first wife have seven children whereas she has two children.
4. The applicant states that since the death of her husband, she has not been included in the estate affairs and neither has she been given any financial assistance despite the fact that the 1st wife collects rental income and revenue from the assets of the estate which are substantial.
5. The applicant avers that her daughters Shyline Wanjiku Waithaka is in grade 5 at Frima School in Thika whereas Angel Wanjiku Waithaka is in play group in the same school and they all require school fees and maintenance. The applicant states that she requires Kshs. 300,000/- for school fees for the year and Kshs. 240,000/- for maintenance and medical expenses for the year.
6. The applicant states that she is a housewife and is not in a position to care and maintain the children without the help of the deceased's funds.

The Applicant's Submissions

7. The applicant submits that she has attached birth certificates of the children wherein the deceased is indicated as their father thus fulfilling the definition of a dependant pursuant to Section 29 of the [Law of Succession Act](#). The applicant further refers to Section 54 of the [Law of Succession Act](#), Rule 36 of the



Probate and Administration Rules and the cases of Re Estate of SMM (Deceased); Re Estate of Daniel A. Korir Kipkurui (Deceased) and Re Estate of Mary Syokwia Kyalili (no citation given) and urges the court to issue to her a special limited grant allowing her to access the deceased's bank account to pay school fees for the minors.

The Law

Whether the application has merit.

8. Section 54 of the *Law of Succession Act* provides:-

A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule of this Act.

9. Rule 36 of the Probate and Administration Rules provides for a limited grant of letters of administration ad colligenda bona for purposes of collecting and preservation of the estate. It provides:-

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 defunct of the estate of the deceased.

10. In the instant application, the applicant seeks grant of letters ad colligenda bona in order to access funds from the deceased's account held at Family Bank Account No. 005000005119 for purposes of paying school fees and school related expenses for her two children and also for maintenance and medical expenses.

11. Pursuant to Article 53 of *the Constitution* of Kenya, this court has a duty to ensure that the best interests of a child are served. The right to education is entrenched in that same Article. It is noted that the applicant needs funds for payment of school fees and school related expenses for her children. In my view, this is an urgent matter which has led to the filing of this application. Rule 36 of the Probate and Administration Rules recognizes need that cannot wait for a full grant to be issued. Among other cases, the applicant relies on the case of Re Estate of Mary Syokwia Ekir and Mary Waithera vs Ann Ndegwa & Another eKLR where the court held: -

“...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 defunct of the estate of the deceased...”

12. The petitioner deposes in the supporting affidavit that letters of administration intestate are yet to be obtained in the estate of the deceased. The need for school fees is supported by a fee structure from Frima School, Thika for the elder child namely Shyline Wanjiru as well as a list of school items required to be purchased in school for the younger child Angel Wanjiku. The applicant explains that she is the 2nd wife of the deceased and has two children of school-going age. The second wife one Lydia Waithigieni Wahome has seven (7) children. The first wife is said to be collecting rent from the deceased's properties to maintain herself and her children. The applicant states that she is a housewife and has no income to support her own children or provide for her basis needs.



13. This court is empowered by Section 73 to make orders that may be necessary for the ends of justice. The applicant has satisfied the court that the two children Shyline Wanjiru and Angel Wanjiku are children of the deceased. Article 53 (2) of *the Constitution* provides that: -

“A child’s best interests are of paramount importance in any matter concerning the child.”

14. The courts have on previous occasions been called upon to issue either grants for example in re Estate of SMM (Deceased) 2021] eKLR the court in its ruling stated as follows: -

“The applicant seeks a special limited grant to enable her to access the deceased’s accounts at Equity Bank and Cooperative Bank “for purposes of payment of school fees and maintenance for the needs and welfare of the children of the deceased Although the applicant claims to be the wife of the deceased no marriage documents are produced. The Chief’s letter dated 12/8/2021 indicates that the applicant is one of the 2 wives of the deceased..... Certificates of all three named children of the applicant with the deceased are attached all indicating the deceased SMM as the father The court has considered that the interests of the children who were shown by certificates of birth to be children of deceased and who were said to be out of school for lack of school fees, require that a special grant be issued to their mother applicant for purposes for payment of school fees and school related expenses. In view of the special nature of the grant herein, the court will not insist on the grant being made to two persons as in cases regular cases where minors’ interests are involved.... In order to preserve the assets of the estate of the other beneficiaries, the access granted to the applicant shall be limited to one bank account and the amount presently required for the school fees and maintenance of the minors only.”

15. The deceased died on 22/10/2024 and the applicant depones that he took care of the children and herself during his lifetime. She states that she requires KSh.300,000 for school fees as KSh.240,00 for upkeep. It is noted that the applicant as a parent has a responsibility on her children with or without the deceased and can provide for upkeep of the children and herself whereas the deceased’s funds in the bank can be utilised for payment of school fees.

16. It is my considered view that applicant has demonstrated the needs of the two children of the deceased for school fees and school related expenses. Consequently, the petition dated 9th April 2025 is hereby allowed in the following terms: -

- a. That the applicant is hereby authorized to access the bank account of the deceased at Family Bank, Thika branch A/c No.0054000005119 to withdraw only KSh.300,000/= for school fees of the two children of the deceased Shyline Wanjiru Waithaka and Angel Wanjiku Waithaka.
- b. There shall be no order as to costs.

17. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 3RD DAY OF JULY 2025.

F. MUCHEMI
JUDGE

