



REPUBLIC OF KENYA



KENYA LAW
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**In re PWM (Deceased) (Succession Cause 91 of 2022)
[2023] KEHC 1560 (KLR) (9 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1560 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 91 OF 2022
HK CHEMITEI, J
MARCH 9, 2023**

RULING

1. The applicant herein Jacinta Nyongesa approached this court by way of a petition for special limited grant dated the September 16, 2022 seeking to process death gratuity in respect of the deceased who met his death while still employed by Pyrethrum Processing Company of Kenya as an Electrical Technician for purposes of paying school fees, maintenance for the needs and welfare of the children of the deceased and further access deceased's account No. XXXX at NSSF.
2. That children school at Nakuru West Primary School. The itemised expenses included educational related needs of Kshs. 18,650/= and Kshs. 16,050/= for Gift Naswa and Olive Nawanga respectively. The rent arrears to a tune of Kshs. 200,000/= same to be settled on or before 5th October 2022. Further outstanding electricity and water bills at Kshs. 41,058/= and Kshs. 110,853/= respectively.
3. Further that this honourable court be pleased to allow her to withdraw Kshs. 80,000/= per month from the pension and death benefits of the deceased at account number XXXX at NSSF for maintenance of the said minors.
4. The application is supported by the affidavit of the applicant herein sworn on the even date wherein she deponed that she was one of the proposed administrators of the Estate and also mother to the above mentioned minors who are beneficiaries to the estate of the deceased. That she had not filed a Succession Cause in respect to the Estate of the deceased and therefore since the demise of the deceased she has been meeting the minors' needs but was currently jobless. Further that the bills had now become stretched which would result to the minors rendered destitute and being sent away from school.
5. The applicant deponed further that it was only proper for this court to consider the interests of the minors and order release of the said funds, considering that letters of administration had not been issued and as such the shares of the beneficiaries had not yet been determined. That she had applied to be issued with a limited grant because the main grant would take a long period to be obtained.
6. The application is opposed by Dennis Masinde via his replying affidavit sworn on the October 3, 2022. He averred that Faith Nangami, Stephen Lukorito and him were the petitioners in Nakuru Chief



- Magistrates Succession Matter No. B25 of 2021. That in the said matter they disputed the applicant's claim that she was a wife to the deceased and they still held the position that the applicant herein was never a wife to the deceased.
7. He averred further that what the applicant stated in paragraph 3 of her supporting affidavit that a succession cause had not been filed in respect of the deceased's estate was a blatant mistruth. That the applicant did participate in Nakuru Succession Cause No. E25 of 2021 under which their advocates were directed to file the petition for letters at Webuye Law Courts.
 8. He went on to aver that this court should therefore down its tools as there was already a succession cause filed which related to the estate of the deceased. That him and the other proposed administrators were in strong opposition of the issuance of a special limited grant pending the distribution of the estate.
 9. In response to the replying affidavit, the applicant filed a further affidavit sworn on the 16th of November 2022 wherein she deponed that in response to paragraph 3, she had moved the court vide Nakuru succession cause No. E 025 of 2020 seeking Limited Grant of Administration Ad Coligenda bona and the same was granted. She deponed further in response to paragraph 4, that the issue of whether or not she was a wife to the deceased or beneficiary to his estate was dealt with in Nakuru Succession E 25 of 2021 where the court ruled that the deceased had two families and that she was the deceased's second wife.
 10. In response to paragraph 5, the applicant deponed that the respondent and his advocates were aware of the existence and contents of the ruling that she was proposed co-administrator. However, that they decided to file a succession cause without her knowledge, despite her attempts to have Dennis Masinde and herself file the succession cause. Further, in response to paragraph 7 and 8 the applicant deponed that she had filed an objection to the making of a grant of representation to the estate sought in the petition of Dennis Masinde Wamwenge and Stephen Lukorito Masinde which had been scheduled for hearing on 20^o December 2022. In addition, that the respondent was therefore in contempt of court orders issued on September 21, 2021.
 11. Finally, the applicant deponed that the amount authorized to be withdrawn by the special limited grant would be taken into account at the point of ascertaining the amount or share of the estate eventually distributed to herself and the minors herein. That this court has no jurisdiction to determine whether or not she was the deceased's wife. She urged the court to consider the interests of the children who were shown by certificates of birth to be children of the deceased.

Analysis and Determination

12. I have considered the application herein, affidavit in support and the replying affidavits by the parties. The court has also read the ruling of the lower court dated September 21, 2021.
13. Taking the totality of the facts herein this court does not see the reason why the applicant filed this matter. Already they had all subjected themselves to the said court vide Succession Cause No E025 OF 2021. That matter related to the estate of the deceased herein. What then is the purpose of this cause yet it relates to the same parties.?
14. It has not been said that the said court did not have jurisdiction and even then the matter before this court is not an appeal.
15. At the same time what use was there to file another cause in Webuye yet the Nakuru matter had already been filed.? The most the parties could have done was perhaps to apply to the said court or to this court to have the matter transferred to Webuye.



16. The only thing the parties would have done is to appeal against the orders of Honourable Mose and not to file this cause.
17. In the premises, this court finds that to the extent that the succession Cause No E025 of 2021 is still in existence ought to proceed. There is no point in duplication. My understanding of the ruling therein was to ask the parties to apply for full grant and not limited grant. The respondents instead went to Webuye court to file another cause instead of proceeding with the matter already ongoing.
18. The issue of the upkeep and maintenance of the children and the applicant can still as well be litigated within the said file as the court is well seized of jurisdiction.
19. In the premises, and applying the inherent powers of this court, article 159 of the Constitution and Rule 73 of the Probate and Administration Rules chapter 160 Laws of Kenya, and considering that the Nakuru E025 OF 2021 was filed earlier the Webuye matter is hereby stayed pending the determination of the Nakuru cause. The issues raised in the Webuye cause may well be canvassed in the Nakuru matter.
20. It is also worthy to note that the two minors have been incorporated in the Webuye matter as beneficiaries meaning essentially that the respondents herein have no problem recognising them as the deceased children.
21. Their schooling and upkeep can still be litigated in the Nakuru matter.
22. It is hereby therefore ordered that;
 - (a) This matter is hereby transferred and consolidated with Nakuru Chief Magistrate Succession Cause No E025 of 2021.
 - (b) The Webuye Succession Cause No E018 OF 2022 is hereby stayed pending the determination of Nakuru Succession Cause No E025 of 2021.
 - (c) The application herein for support and maintenance of the minors be argued before the trial court in Cause No E025 of 2021.
 - (d) Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 9TH DAY OF MARCH 2023.

H. K. CHEMITEL.

JUDGE

