



EA v MBE (Succession Appeal E004 of 2023) [2023] KEHC 20575 (KLR) (20 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20575 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION APPEAL E004 OF 2023
SC CHIRCHIR, J
JULY 20, 2023**

BETWEEN

EA APPELLANT

AND

MBE RESPONDENT

(Being an appeal from the Ruling in Kakamega Chief Magistrate's Succession Cause No. E610 of 2021 By Hon J.R. Ndururi (PM) On 16th February, 2023)

RULING

1. The applicant's notice of motion dated March 7, 2023 seeks for an order that pending the hearing of the appeal, the Principal, [Particulars Withheld] college, be ordered and directed to pay the applicant EAO, a sum of Kshs 400,000 to cater for school fees and related expenses for the children of the deceased namely, EPM and EAE.
2. The application is supported by the affidavit of the applicant and the grounds appearing on the face of the application.

Applicant's Case

3. It is the applicant's case that she was dissatisfied with the lower court's decision which directed that the deceased benefits from [Particulars Withheld] College be handled by the Public Trustee.
4. That the children are in dire need of school fees, and other necessities which the applicant is unable to provide. She has since appealed against the said ruling.
5. She has approached the court under certificate of urgency seeking the aforesaid orders pending appeal.



Respondent's Case

6. The application is opposed through the affidavit of MBEW. The respondent accuses the applicant of filing of multiple suits and forum- shopping.
7. That he has been helping in providing food stuffs for the children in his capacity as the grandfather. He also states that he has made available a residential house for use by the applicant and the children which the applicant has turned down.
8. He refutes that the fees are in arrears to the tune of Kshs 400,000 and asserts that the children's schooling is sponsored by the said school.
9. That the application if allowed will effectively dispose off the appeal.

Determination

10. I have considered the application, the supporting affidavit and the replying affidavit, plus the respective annexures.
11. The applicant herein is the administrator of her later husband's estate, one JLE (deceased), and the respondent is her father- in- law. Her appointment as the administrator was done through Kakamega Chief Magistrate's Court succession cause No 619 of 2021.
12. During the confirmation proceedings, against which the respondent protested, the applicant's administration of the estate was confirmed. However, the court directed that the estate assets, namely the deceased's benefits from [Particulars Withheld] College and monies held at Law Society of Kenya Sacco, be surrendered to the Public Trustee, to manage
13. The lower court further directed the applicant to present the children's school fees demand notices for each child to the Public Trustee to for payment either annually or on every school term, as the case may be.
14. Applicant was aggrieved by the said ruling, and proffered this appeal and at the same time filed the present application.
15. A perusal of the documents filed in this case shows that there are some apparent differences and many issues that exist between the parties herein. I will refrain from making any comment on them as they are best dealt with in the main appeal. For now, I will confine myself to the prayers in the application.
16. The applicant seeks for release of Kshs 400,000 by [Particulars Withheld] College. This is part of the funds that the lower court had directed that it be released to the public trustee, for management. The applicant was further directed to submit any requests for school fees to the Public Trustee to effect payment.
17. It is obvious that the applicant was not happy with these directions and that is why she has filed this appeal. However, the application, in effect, seeks to overturn the ruling of the trial court albeit partially without the benefit of hearing the full appeal. I agree with the respondent that were this prayer to be granted, it will render the appeal nugatory
18. Secondly, the reasons for seeking the Kshs 400,000 is not genuine. The lower court being alive to the need for the children's fees, gave directions on how to take care of that. Even if the applicant intended to appeal against the judgment nothing stopped her from seeking partial enforcement, so as to take care of the children's fees. It is rather odd, that the applicant would let the children's fees fall into arrears as alleged when the court has given her access to the funds.



19. It is not also lost on me that the applicant is on her 2nd appeal to this court, arising from the same suit and like in the present application, seeking for release of funds. The first appeal was withdrawn after some funds had been released to the applicant. But as earlier stated, it is not necessary to address these, and related issues at this stage of the appeal.
20. As for the other needs of the children, the respondent has made an offer for housing and there is evidence that he has occasionally send money to the applicant for the children's upkeep.
21. As noted by the trial court, the funds available from the estate are quite minimal when considered against the age of the children, who are still young. They have several years of education that are yet to cover. Allowing withdrawal of the funds to meet other needs, will quickly deplete the funds to the detriments of the same children.
22. I am not convinced about the genuineness of the applicant's claim. It is not necessary. It is vexatious. It is hereby dismissed.
23. Each party to meet their own costs.

DATED SIGNED AND DELIVERED IN THE OPEN COURT AT KAKAMEGA THIS 20TH DAY OF JULY 2023

S. CHIRCHIR

JUDGE

In the presence of:-

Eric- Court Assistant

The Appellant- in person

No appearance by the Respondent.

