



**In re Estate of Isaya Mosiori Osugo (Deceased) (Succession Cause E1294 of 2023)  
[2024] KEHC 14272 (KLR) (Family) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14272 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E1294 OF 2023  
H NAMISI, J  
NOVEMBER 14, 2024**

**IN THE MATTER OF THE ESTATE OF ISAYA MOSIORI OSUGO (DECEASED)**

**BETWEEN**

**DRUSCILLA MORAA MOSIORI ..... PETITIONER**

**AND**

**ISABELLA MORAA MOSIORI ..... 1<sup>ST</sup> OBJECTOR**

**JULIA KAMUYU KAMUIRU ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. By Petition dated 2 October 2024, the Petitioner herein applied for Letters of Administration Intestate in respect of the estate of the Deceased, who died on 9 January 2023. According to her Supporting Affidavit and the Chief's letter dated 23 August 2023, the Deceased is survived by the Petitioner (widow) and seven children.
2. The 1st Objector filed an Objection to the Making of Grant dated 19 April 2024 on the grounds that she was a wife to the Deceased and their union was blessed with two children. She also averred that some assets constituting the estate of the Deceased had been omitted from the Schedule of Assets.
3. Similarly, the 2nd Objector filed an Objection to the Making of Grant dated 19 April 2024 on the grounds that she was a wife to the Deceased and their union was blessed with two children. In her Objection, she included an Amended Schedule of Assets.
4. On her part, the Petitioner filed responses to the two objections.
5. The Objectors have moved the court by way of two applications, the subject of the Ruling herein. Both applications were canvassed by way of written submissions.



#### **Application dated 13 August 2024**

6. By Notice of Motion dated 13 August 2024, the 1st Objector seeks the following orders:
  - i. Spent
  - ii. That reasonable provision for school fees be made for two dependents, E.K and E.M.O, children of the Deceased, pending the hearing and determination of this cause;
  - iii. That leave be granted to the Applicant allowing her to withdraw Kshs 297,266 from the Deceased's Standard Chartered account number 0100\*\*\*\*\*600 purely for purposes of paying the minors' school fees;
  - iv. That costs hereof be in the cause.
7. The Application is supported by the Affidavit sworn by the 1st Objector and premised on the following grounds, inter alia:
  - i. That E.K. and E.M.O are children of the Deceased and this was confirmed in Civil Case No E081 of 2023, where the Applicant sued the Petitioner and another with a view of the minors and Applicant being allowed to participate in the funeral service of the Deceased and carrying out a DNA test to establish the paternity of E.K and E.M.O before the Deceased was buried.
8. The 1st Objector averred that on 19 January 2023, Hon. E. M. Kagoni held as follows with respect to an application dated 17 January 2023:
  - i. That the Applicants be allowed to participate in the remaining programme of the Deceased's funeral arrangements and they be allowed to address those attending the burial slated for 20 January 2023;
  - ii. That there being no objection to the issue of paternity of the two issues, there will be no need for a DNA being conducted before the Deceased is buried;
  - iii. That the burial of the Deceased to proceed as earlier planned;
  - iv. That the parties are at liberty to apply
9. To the Supporting Affidavit, the 1st Objector has attached Letter dated 16 November 2023 in verification of the Certificates of Birth for the children herein, EKM and EMO as well as copies of the said Certificates, which indicate the Deceased as their father. Also attached is a Bank Statement as at 25 August 2023 and Invoices from Juja Preparatory School dated 2 September 2024 for Kshs 122,780/- in respect of fees for E.M.O and Kshs 174,486/- in respect of fees for E.K.M.

#### **Application dated 16 September 2024**

10. The 2nd Objector filed Notice of Motion dated 16 September 2024 seeking the following orders:
  - i. Spent
  - ii. That reasonable provision for school fees be made for the two dependents, SEO and RWM, children of the Deceased pending the hearing and determination of these proceedings;
  - iii. That leave be granted to the Applicant allowing her to withdraw Kshs 827,250/= from the Deceased's Standard Chartered account number 0100\*\*\*\*\*600 purely for purposes of paying the minors' school fees and medical expenses;



- iv. That this Honourable Court be pleased to issue an order of DNA testing for purpose of determining the issue of the paternity of SEO and RWM once and for all pursuant to the orders issued in Nairobi Children's case No. 447 of 2020 and Nairobi HC Misc Application NO. E006 of 2022 on 8 September 2020 and 19 January 2023, respectively, pending hearing and determination of this cause;
  - v. That the costs hereof be in the cause
11. The Application is supported by an Affidavit sworn by the 2nd Objector and premised on the following grounds, inter alia;
- i. The Court in Nairobi Children Case No. 447 of 2020 and Nairobi HC Misc Application Number E006 of 2022, vide orders dated 8th September 2020 and 19 January 2023, respectively, directed that DNA tests be done and removal of tissue samples from the remains of the Deceased for purposes of DNA testing, which orders were duly served upon the Petitioner;
  - ii. That both minors are school going children, SEO is a Form Four candidate at Muranga High School with outstanding fees of Kshs 148,280/=, while RWM is a Grade Six candidate at Rophinefields School with outstanding fees of Kshs 228,970/= and the Deceased was the one responsible for payment of the minors' fees before his demise;
  - iii. That RWM needs to undergo an urgent surgical procedure for management of Follicular Lymphoid Hyperplasia, a condition which she had had since the Deceased was alive and in fact, owing to the recurrent nature of the condition for which the minor has undergone two procedures, the Deceased herein had asked the Applicant for health insurance quotation for the minor so as to insure her, but passed on before the Applicant could avail the same;
12. To her Supporting Affidavit, the 2nd Objector has attached Birth Certificates of the minors, Replying Affidavit sworn by the 1st Objector on 18 June 2023 in Nairobi P&A Cause No. E418 of 2023; Mpesa statements; order dated 3 September 2020 in Nairobi Children Case No 447 of 2020; Letter dated 13 September 2024 from Muranga High School indicating outstanding fees of Kshs 148,280/=; Statement from Rophinefields School indicating outstanding fees of Kshs 228,970/= as at September 2024; Jubilee Health Insurance Quotation dated 11 September 2024; Letter dated 10 September 2024 from Donholm Medical Clinic confirming RWM's condition and a similar Bank Statement as the one attached by the 1st Objector.
13. The Petitioner opposed both applications. According to the Petitioner, she is the only wife to the Deceased, having celebrated their customary marriage in 1983 and the same was solemnized at the Registrar's office in April 1995. She denounced the four children of the Objectors, stating that they are not children of the Deceased and not entitled to any share of the estate.

### **Analysis and Determination**

14. I have considered the two applications, the Affidavits in support, Replying Affidavits, Further and Supplementary Affidavits, the rival written submissions by parties and authorities cited.
15. Sections 54 and 67 (1) of the *Law of Succession Act*, Cap 160 of the Laws of Kenya and Rule 36 of the Probate and Administration Rules provide the circumstances under which a Special Limited Grant may be issued by the Court.
  - (54) 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 to this Act.



- (67) (1) No grant of representation, other than a Limited Grant for Collection and Preservation of Assets, shall be made until there has been published notice of the application of such grant, inviting objections thereto to me made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.
- (36) (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.
16. In determining these Applications, it is important to bear in mind the definition of a dependant. Section 29 of the Act defines dependant to include any children of the deceased whether or not maintained by the deceased immediately prior to his death. Dependants also include such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death.
17. In respect of the 1st Objector's application, it is clear from the copies of Birth Certificates that the two children, EKM and EMO, were children of the Deceased. Further, I note that it is not disputed that there is an order dated 19 January 2023 in Nairobi Civil Case No. E081 of 2023 in which the court directed as follows:
- “That there being no objection to the issue of paternity of the two issues, there will be no need for a DNA being conducted before the Deceased is buried;”
18. In view of the foregoing, I find that EKM and EMO were children, and hence dependants of the Deceased.
19. In respect of the 2nd Objector's Application, the Birth Certificates of the children do not indicate the name of their father. However, the 2nd Objector has attached Mpesa statements that show regular money transfers from the Deceased to her. For this reason, I find that the two children, SEO and RWM, were dependants of the Deceased.
20. I have considered that the interests of the children who were shown by certificates of birth to be children of the deceased and/or dependants and who were said to be out of school for lack of fees, require that a special grant be issued to their mothers (Objectors/Applicants) for purposes of payment of school fees, school related expenses and medical treatment.
21. I have also considered that the size of the estate has not been fully established and that there are several other beneficiaries. The authority to access the money in the accounts should be limited to school fees and reasonable school related expenses and medical expenses for RWM.
22. In order to preserve the assets of the estate for other beneficiaries, the access granted to the Applicants shall be limited to one bank account, Standard Chartered account number 0100\*\*\*\*\*600, and for the amount presently required for the school fees and maintenance of the minors only. This amount translates to Ksh. 671,516/= made up of Ksh.174,486 school fees for EKM, Ksh. 122,780/- school fees for EMO, Kshs 148,180/= school fees for SEO and Kshs 228,970/= school fees for RWM. The balance in the account, amounting to Kshs 325,000/= to be utilised for the medical treatment of RWM.
23. The amount authorised to be withdrawn shall be taken into account at the point of ascertaining the amount or share of the estate eventually distributed to the Objectors and their children.



24. Any further dealing with the estate of the Deceased must be with the authority of the Court or upon full grant of representation.
25. The Manager of Standard Chartered Bank Limited, Thika Road Mall Branch shall be served with this Order for compliance.

**DATED AND DELIVERED AT NAIROBI THIS 14 DAY OF NOVEMBER 2024**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

.Ms. Kache.....for the Petitioner

Alela ..... for the 1st Objector

Mrs. Fundi.....for the 2nd Objector

