



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Makokha Idris Musindalo (Deceased) (Succession Cause
13 of 2017) [2024] KEHC 14445 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14445 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 13 OF 2017
SC CHIRCHIR, J
NOVEMBER 14, 2024**

IN THE MATTER OF THE ESTATE OF MAKOKHA IDRIS MUSINDALO (DECEASED)

BETWEEN

**ZUBEIDAH KHASABULI IBRAHIM 1ST ADMINISTRATOR
GABRIEL WESONGA 2ND ADMINISTRATOR
HANIFA IDRIS MUSINDALO 3RD ADMINISTRATOR**

AND

**FAMI IDRIS 1ST PROTESTOR
SELFA QUEEN MUDIBO 2ND PROTESTOR
UMA MALOBA 3RD PROTESTOR**

RULING

1. The Notice of Motion dated 2nd July 2024 has been brought by the first applicant. It seeks for the following orders:
 - a. (spent).
 - b. THAT this Honourable court be pleased to grant orders directing release of Kshs. 122,000/= from the deceased's bank account, being the total sum for facilitation of the DNA kinship relationship test required by court.
 - c. That the said order be issued to Cooperative Bank, Bungoma Branch for Account no. 01109783XXXX00 being the deceased's bank account details.
 - d. That the costs of this application be provided for.



2. The Motion is brought under section 1A, 1B & 3A of the *civil procedure Act* and order 51 rule 1 of the *Civil Procedure rules* . It is supported by the grounds appearing on the face of the Application and the supporting affidavit of the 1st applicant, Zubeidah Khasabuli Ibrahim.(The Applicant)
3. The applicant states that following an earlier order of this court directing the carrying out of a DNA Test on Gabriel Wesonga, they visited the Government Chemist at Kisumu for purposes of the test. However the laboratory personnel informed her that the carrying out of the test require the testing of more than two kindred persons.
4. She further stated that the persons required to take the tests are: Gabriel Wesonga, Selfa Queen Mudibo, Farida Musindalo Idris, Hanifa Idris Musindalo, Zubeidah Khasabuli Ibrahim, and Aaswim Idris at a rate of Kshs. 12,000/= per person ; that for and Fami Idris, Umu Maloba, Shamim Idris , Razia Idris and Sharif Idris the cost is at Kshs. 10,000/= per person.
5. The Applicant states that it would be unfair for her to solely bear the costs of the DNA and that this cost should be met by the Estate.
6. The Application is not opposed.

Applicant's submissions

7. The Applicant submits that as the surviving spouse of the deceased, she was unable to singlehandedly carter for the DNA testing; that estate should carter for expenses incidental to it.

Determination

8. In the judgment delivered on 7th October 2022 by this court(Hon. W. Musyoka J) the court found that there were unresolved questions regarding the paternity of one of the alleged beneficiaries, one George Wesonga . Consequently the Judge ordered for a paternity test in respect of the said George. The samples for comparison were to from the other children of the deceased.
9. The applicant prays that the court allows her to access the deceased's funds held in the Bank to defray the costs of the DNA test.
10. The general principle on costs of administration according to *Halsbury's laws of England*(, 17th Edition) is that the administrative and testamentary costs incurred by the administrator in discharging his duties are payable from the estate. It states as follows-

“The general principle- The general principle is that the estate must bear the expenses incident to the proper performance of the duties of the personal representative as personal representative....

The costs of administration- The general costs of administering the estate are testamentary expenses, for this term is not confined to the will and indeed it applies to an intestacy. The estate must therefore bear the cost of obtaining the grant, collecting and preserving the assets, discharging the debts and distributing the balance.”
11. The costs of determining the rightful beneficiaries is part of administration of the estate and the costs thereof should therefore be met by the Estate.
12. In view of the foregoing and the powers bestowed on this court by Rule 73 of the *probate and Administration Rules*, to serve the ends of justice, as well as moving this matter forward, I hereby proceed to make the following orders:



- a). That Cooperative Bank of Kenya, Bungoma Branch is hereby directed to release Kenya shillings One hundred Twenty two thousand(Ksh. 122,000)only, to Zubeidah Khasabuli Ibrahim, the Applicant herein from the deceased's Account No. 01109783XXXX00, to meet the cost of DNA test in terms of paragraph 6 of the court order of 7th October 2022.
- b). The DNA to be conducted not later than 30 days from the date of this Ruling
- c). The Administrator shall, not later than 14 days after the DNA Test, make a documentary return on the expenditure of the above stated sum.
- d). This matter shall be mentioned on a date to be assigned on the date of this Ruling to confirm compliance with the aforesaid orders.
- e). I make no orders as to costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 14TH DAY OF NOVEMBER 2024

S. CHIRCHIR

JUDGE.

In the presence of :

Godwin Luyundi- Court Assistant.

Mr. Nandwa for the Applicant

