



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1792 OF 2016

IN THE MATTER OF THE ESTATE OF MUKESH BILLING alias MANJIT

BILLING alias M. BILLING alias MUKESH (MANJIT) BILLING - (DECEASED)

PATRICIA HANAMAN BILLING.....PETITIONER

VERSUS

KARINA BILLING.....RESPONDENT

AND

RAJINDER BILLING.....1ST INTERESTED PARTY

BINA BILLING.....2ND INTERESTED PARTY

CHATTAR BILLING..... 3RD INTERESTED PARTY

KALEET BILLING.....4TH INTERESTED PARTY

AND

FARZANA T. YAKUB.....CAVEATOR

RULING

1. The deceased Mukesh Billing alias Manjit Billing alias M. Billing alias Mukesh (Manji)t Billing died intestate on 29th March 2015. He left a widow Patricia Hanaman Billing (the applicant and co-administratrix) and two sons. One of the sons is Jason Hanaman Billing who is the subject of this application.
2. The deceased was an advocate who was practicing in Nairobi. His firm was Guram & Company Advocates. Following his death, his brother Rajinder Billing took over the management of the law firm. The deceased had nominated him to manage and conclude all pending cases in the law firm in the event of his incapacitation or death.
3. When the applicant petitioned for the grant of letters of administration intestate the same was opposed by the deceased's family, that included Rajinder Billing. After a protracted dispute, on 4th July 2019 a consent was reached in which the applicant and Karuna Billing (the wife of Rajinder Billing) were appointed the administratrices of the estate of the deceased.
4. It does not appear to be in dispute that, before the deceased died the arrangement was that the applicant and their children would live in India and would be provided for by the deceased who was living in Kenya. The applicant was not employed.
5. It is also clear that the deceased's law firm held Accounts Nos. xxxxxx and xxxxxx at Trans National Bank in Nairobi. As at 31st January 2020 the accounts had Kshs.23,379,176/59.

6. The applicant filed the present summons dated 15th February 2021 seeking the following orders:-

“(1) That this application be certified urgent and heard forthwith on account of its urgency.

(2) That the Honourable Court be pleased to extend parental responsibility against the estate of Mukesh Billing (Deceased) alias Manjit Billing alias M. Billing Alias Mukesh (Manjit) Billing with respect to Jason Hanaman Billing.

(3) That the Honourable Court be pleased to order that an equivalent of CAD \$13,317.95 be paid out of the estate of Mukesh Billing (Deceased) alias Manjit Billing alias M. Billing Alias Mukesh (Manjit) Billing to cater for the outstanding balance and tuition fees for the remaining Summer and Fall Semesters at Thompson Rivers University in Canada.

(4) That the Honourable Court be pleased to order that an equivalent of CAD\$16,150.00 be paid out of the estate of Mukesh Billing (Deceased) alias Manjit Billing alias M. Billing Alias Mukesh (Manjit) Billing to cater for living expenses for Jason Hanaman Billing for the remaining period until completion of his studies at Thompson Rivers University pending the confirmation of grant of letters of administration.

(5) That the Honourable Court be pleased to order that an equivalent of CAD\$1000 be paid out of the estate of Mukesh Billing (Deceased) alias Manjit Billing alias M. Billing Alias Mukesh (Manjit) Billing to cater for Jason Billing travelling expenses back to India upon completion of his studies.

(6) That the Honourable Court be pleased to order that an equivalent of CAD\$43,106.99 be paid out of the estate of Mukesh Billing (Deceased) alias Manjit Billing alias M. Billing Alias Mukesh (Manjit) Billing to David Hanaman Pyngrope as repayment of the loan expended towards catering for Jason Hanaman Billing’s University tuition fees, living expenses and travelling expenses.

(7) That the Honourable Court orders Transnational Bank to unfreeze the deceased Accounts Nos. xxxxx and xxxxxx for the purpose of paying the expenses in prayer 3, 4, 5 and 6.”

7. In the grounds and supporting affidavit, the applicant’s case was that during the deceased’s lifetime he was the one taking care of the family, including the education of the children. Since his death, the family has not received any financial support from his estate. The applicant turned to relying on her brother for upkeep. Jason Hanaman Billing was born on 6th July 1995. He is 26. According to the applicant, he is undertaking a university diploma at Thompson Rivers University in Canada. He did first year which cost him 35,245.50 CAD. The applicant took a loan from her brother to cater for that. She was hoping that this succession cause would be over soon. Jason has now been admitted for a second year which has commenced, and he was required to pay 7,861.32 CAD as tuition fees for the winter semester. She got a further loan of 5,957.55 CAD from her brother. In all, the applicant requires 13,317.95 CAD for the remaining semesters, living expenses for the year 16,150 CAD, and 1,000 CAD to use to travel back to India on completion of his studies. In total, the applicant sought 73,574.95 CAD from the estate to cover the above expenses and the refund of the loans she got from her brother David Hanaman Pyngrope.

8. The applicant stated that, although Jason is 26, following the deceased’s death the family was out of funds to maintain and educate him until his uncle stepped in. This is why even after 18 he is still a student. Her case was that this constitutes special circumstances that warrant the extension of parental responsibility over him.

9. The application was brought under **section 26 of the Law of Succession Act, rule 45 of the Probate and Administration Rules and sections 28 and 76 of the Children Act.**

10. The interested parties (Rajinder Billing, Bina Billing, Chattar Billing and Kaleet Billing) opposed the application through grounds of opposition. The grounds were that the money at the bank are held in advocate-clients account which is a trust account and will be so held pending the process of separation to know what constitutes office account and what constitutes client account. Secondly, they filed a statement accounts showing that the deceased’s law firm, and therefore the estate of the deceased, owes Kshs.68,000,000/=. They stated that the applicant had not demonstrated how this will be settled. Consequently, they said, it would be difficult at this stage to know whether the deceased’s estate has any assets that can go to the applicant as applied. Thirdly, what was being sought amounted to partial confirmation of the grant when the dependants of the deceased have yet to be ascertained. Fourthly, the personal representatives have yet to collect and gather the estate of the deceased, ascertain the assets of the estate, the liabilities, and so on, before the issue of distribution can follow.

11. Regarding Jason, they contended that there was no confirmation letter from the University to show that he was a student there; there were no receipts showing any fees has been paid; the annexed air ticket showed travel was on 26th October 2019; there was no evidence to show that he was on student visa which ordinarily would be affixed on his passport; and therefore the status of Jason as a student in Canada had not been verified.

12. The applicant responded to the grounds of opposition to state that there was no evidence that the money held at the bank was held in advocate-clients account. Further, it was six years since the deceased died and yet no demand had been made against the money. She stated that she had caused a publication in the daily newspaper calling for any person who was owed money by the firm but none had showed up. She stated that the information as to how much was held in the bank followed the application by Karuna Billing (the respondent) whose supporting affidavit was that she wanted to know how much the money was to be able to pay the testamentary debts and the balance to be paid to beneficiaries. She did not indicate in the application that the money was owed to clients. Regarding the alleged Kshs.68 million, the applicant’s response was that the amount was said to be expenses by the deceased’s late mother, the deceased’s sister, what was spent during the deceased’s hospitalization before death and storage charges in respect of the office furniture and household goods of the deceased. She stated that all these expenses had been exaggerated. For instance Kshs.27,264,000/= was said to have been spent on the deceased’s late mother. The entire sum was being loaded on the estate of the deceased, and yet the deceased’s mother had five other children who included

the 1st, 2nd and 4th interested parties and two sons in the UK, one of whom was a lawyer.

13. Regarding Jason, she produced a copy of his student ID and letter from the University to show he was a student there. She produced a printout from the University showing the fees balance.

14. The respondent swore affidavits to support the grounds and oppose the application. Regarding the alleged advert in the Daily Nation, she stated that they had made an inquiry and established that there was no such advert calling for people the law firm owed money, or at all, and that no payment had been made for such an advert. In respect of the books of accounts, her case was that the matters would be discussed during the main hearing. She reiterated that Jason had no student visa to study in Canada, and therefore his student status was in question.

15. The applicant swore a further affidavit to state that Jason's study permit was subject to the validity of his passport, and since the passport required renewal on 12th April 2021, the student permit also required renewal and updating in the new passport. He has since applied for the study permit extension on the basis of his new passport issued by the Indian Embassy in Canada.

16. Mrs. Thongori (Sc) for the applicant and Mr. Kihanga for the respondent, interested parties and caveator each filed written submissions on the application. According to counsel for the applicant the issues for determination were:-

- (a) whether the court ought to extend parental responsibility for Jason;
- (b) whether the estate should pay the requested amounts; and
- (c) whether the court is empowered to grant an order to release the funds as prayed prior to confirmation of the grant.

17. As for counsel for the respondents and interested parties, the issues were:-

- (a) whether the court can extend paternal responsibility beyond the death of the deceased;
- (b) whether the payment of the money to any beneficiary at this stage amounts to partial distribution of the estate; and
- (c) whether the payment to meet the alleged expenses would violate the priority payments under **sections 83(a), (b), (c) and (d) of the Act**.

18. After consideration of the application and the rival positions on the same, and after considering the written submissions, the issues that emerged for determination are:-

- a) whether Jason is indeed in the University in Canada;
- b) if so, and given his age, whether parental responsibility can be extended to enable the court to order payment of his fees and related upkeep as applied;
- c) now that the extent of the estate of the deceased had not been determined, the beneficiaries ascertained and the debts and liabilities to the estate known and settled, whether Jason can be paid the sought amount, or at all; and
- d) lastly, whether there are any other appropriate orders that can be made, in the circumstances of this application.

19. As much as possible, these issues will be considered together as they are related.

20. The applicant's case was that Jason was in the University in Canada, and she tendered evidence of his ticket from India, the admission in the University and the University indicating how much fees was to be paid or had been paid. The respondent and interested parties kept asking that the applicant produces evidence that Jason had been issued a student visa by Canada to allow him to study in the University. They indicated that such visa should be endorsed in his passport. In the various affidavits and documents filed by the applicant there was no evidence of such visa. It was only in her last affidavit sworn on 1st June 2021 that she deponed as follows:-

“6. That Jason Hanaman Billing’s Study Permit is subject to the validity of his passport, and since the passport holder, Jason’s Student Study Permit was also required to be renewed and updated in his new passport. He has since applied for the Study Permit extension on the basis of his new passport issued by the Landon Embassy in Canada. I hereby annex copies of his Student Permit and application for renewal marked as Exhibit JHB – 1A and JHB – 1B in further proof thereof.”

Indeed the annexed passport shows that Jason had a student permit issued by the Canada authorities for the period between 21st September 2019 and 12th April 2021. This is the permit he was going to extend in his new Indian passport.

21. This should settle the question of Jason's student visa and/or permit to study at Thompson Rivers University in Canada.

22. Regarding the question of extending parental responsibility over Jason to be able to pay his fees and upkeep at the University in Canada, it is common ground that the request is being made by his mother (the applicant) so as to benefit from the estate left by his deceased father. It is not in dispute that he joined the University in 2019. Having been born on 6th July 1995, he was then 24 years old. He was well beyond

18. There was no evidence that he was in an ongoing academic or tertiary studies that he was required to complete when he reached 18 years old.

23. **Section 28(1)** of the **Children Act** states that:-

“28(1) Parental responsibility in respect of a child may be extended by the court beyond the date of the child’s eighteenth birthday if the court is satisfied upon application or of its own motion, that special circumstances exist with regard to the welfare of the child that would necessitate such extension being made:

Provided that the order may be applied for after the child’s eighteenth birthday.”

24. Regarding **section 28(2)** such application may be made by a parent or relative of the child, a person who has parental responsibility over the child, the Director of Children Services, or the child.

25. Under **section 91(b)** of the **Act**, a person who has attained the age of eighteen may, with the leave of the court, apply to the court for a maintenance order to be made in the following circumstances: -

“(i) The person is or will be involved in education and training which will extend beyond the person’s eighteenth birthday; or

(ii) the person is disabled and requires specialised care which will extend beyond the person’s eighteenth birthday; or

(iii) the person is suffering from an illness or ailment and will require medical care which will extend beyond the person’s eighteenth birthday; or

(iv) other special circumstances exist which would warrant the making of the order.”

Jason is not disabled nor does he require any specialized care which will extend beyond his eighteenth birthday. He suffers no sickness or ailment. He was not involved in education and training that was extending beyond his eighteenth birthday. He sought to be covered under –

“other special circumstances.”

Which were these circumstances? This is what the applicant deponed:

**“5. THAT during his lifetime, my late husband catered for the educational and maintenance expenses of our two sons and myself and as such we were totally dependant on him
6. THAT unfortunately, my two sons and I have not received any financial support from my late husband’s estate since his demise on 29th Mach 2015 as a result, we have had to rely on my brother for financial assistance.**

7.THAT although Jason Hanaman Billing has attained the age of eighteen he is still a student undertaking his first University Diploma and I am advised by my advocates which advice I believe to be true that same constitute special circumstances that warrant the extension of parental responsibility.”

26. When the deceased died Jason was an adult. He was 20. Was he in school? Which school? Did he abandon the school owing to the deceased’s death? What was he doing when he attained eighteen? I ask these questions because I do not think that there are any special circumstances that have been demonstrated by the applicant to enable the court extend parental responsibility over Jason beyond his eighteenth birthday. I find that, to that extent, the request under **sections 28** and **76** of the **Children Act** has no merit and is declined.

27. Nonetheless, the applicant and Jason are widow and son, respectively, of the deceased. They are beneficiaries of the estate of the deceased. They rank higher in priority in relation to the estate when complained to the respondent, the interested parties and the caveator. This point has to be emphasized because the 1st interested party is managing the law firm left by the deceased and has not paid a cent towards the upkeep of the widow or children of the deceased. He and his wife (the respondent and co-administrator) now say that the estate of the deceased has liabilities amounting to Kshs.68 million. The substantial part of liabilities are upkeep and maintenance bills over the deceased’s late mother and the deceased’s siblings. They are being raised against the estate. This is being done as if the deceased was the only child of his parents who should take up all bills by the family. The idea is simple: that at the end of the day, the widow and the children of the deceased will have nothing to inherit.

28. The respondent and the interested parties may at the end of the day prove that the estate owes them and the family Kshs.68 million. The deceased’s law firm may be heavily indebted, but it is a running enterprise. The 1st interested party cannot pass a dime to the family of the deceased for upkeep? The applicant, in the affidavit sworn on 1st June 2021 was able to demonstrate in paragraph 7 and its annexure that, when told by the 1st interested party that her late husband’s law firm had many clients wanting money from it, put up an advert in the Daily Nation asking for such claimants to show up. Her evidence was that no one came up.

29. There is the Ksh.23,379,176/59 in the deceased’s law firm’s accounts at Transnational Bank. The respondent and the 1st interested party stated that the money was kept in client’s accounts, but did not lead evidence in that regard. Infact, it was only in the application dated 27th January 2020 by the respondent when she sought to know how much was in the accounts that the bank disclosed the amount. Before this it

was not known how much the accounts held, and the respondent did not make the application because clients had come knocking. She wanted the money to pay testamentary debts and to distribute the balance to beneficiaries. How much were the testamentary debts was known only to her.

30. It should be clear that the applicant and her children were legally entitled to be maintained by the deceased (**In Re of the Estate of Joshua Orwa Ojodeh (Deceased) [2014]eKLR**). The applicant is not employed. It is the deceased who had arranged that she and the children stay in India as he runs his practice in Kenya and maintains them. He died. Are they helpless in the eyes of the law?

31. There is no dispute that when ultimately the grant issued to the applicant and the respondent comes up for confirmation, they will have to show that they have gathered and collected the estate of the deceased and diligently managed it. They will be required to show that they have identified the beneficiaries and dependants of the estate of the deceased. They will show the debtors and creditors of the estate of the deceased. As for debts and liabilities, they will show that either they have paid or have an acceptable proposal of paying them. They will show the net estate of the deceased and propose to court how it should be distributed.

32. But does that mean that the widow and children of the deceased who were depended on him before death, should starve, beg and steal until this process, however long it takes, is completed? My considered view is that the **Act** did not intend that such be the situation. The **Act** must have intended that, in appropriate circumstances, and on application, remittances be made to those who were reliant on the deceased for upkeep, fees, rent and so on so that their lives would continue with minimum interruption. It also means that whatever remittance, call it partial confirmation or any other name, will be taken into consideration when finally distributing the net estate of the deceased.

33. In the final analysis, and considering the jurisdiction of this court under **section 47** of the **Law of Succession Act** and **rule 73** of the **Probate and Administration Act**, I order and direct that Kshs.5,000,000/= (Five Million Kenya Shillings) will immediately be withdrawn from accounts numbers 11897002 and 11897304 at Transnational Bank for the upkeep and use by the applicant and Jason Hanaman Billing. The amount shall be taken into consideration during the confirmation of the grant in respect of the estate of the deceased when the net estate will be distributed to beneficiaries, dependants and debtors.

34. This is a family dispute. Costs will be in the cause.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF DECEMBER 2021

A.O. MUCHELULE

JUDGE