



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 479 OF 2018

IN THE MATTER OF THE ESTATE ELIUD SIMON MBILU (DECEASED)

EUNICE SIMON MBILU.....PETITIONER/APPLICANT

VERSUS

MARIE KASYOKA MBILU.....1ST RESPONDENT

BETTY SYONGOME MBILU.....2ND RESPONDENT

NANCY MWENDE MBILU.....3RD RESPONDENT

JULIE SYOMITI MBILU.....4TH RESPONDENT

ESTHER MWIKALI KATONGU MBILU.....5TH RESPONDENT

RULING

1. The application before court is dated 10th July 2019 filed by one of the administrators **Eunice Simon Mbilu** a widow, seeking to have monies disbursed from the estate to cater for lawyers fees, medical expenses and investigation fees all totalling to Kshs. 10,746,200/=. The application is supported by the affidavit of the applicant.
2. The application is objected to by Marie Kasyoka Mbilu a co-administrator and daughter to the deceased from the 1st house.
3. The deceased herein died on the 30th of April 2017 and was survived by a widow and 6 children. The Applicant is the 2nd wife of the deceased and the children from his 1st marriage.
4. The widow petitioned the court for grant of letters of administration and on 29th April 2019 was issued with one. On May 17th 2019 Marie Kasyoka Mbilu by consent of the parties was appointed as a co-administrator.
5. From the pleadings and submissions it appears that the two co-administrators did not agree on any of the requests by the applicant such that prayers seeking to pay the respondent's counsel's fees and medical expenses for the respondent's sibling were withdrawn upon a complaint being raised by the Respondents.
6. The bone of contention is that no consultations were made and/or discussions concluded on the matters raised in the application. Secondly the 1st Respondent contends that the request for lawyers' fees is premature as no agreement was arrived at and/or no advocates' bills have been taxed, investigations were carried out without input of the 1st Respondent and further the applicant has maintained herself since the deceased died.
7. The application was filed pursuant to **Section 47** of the **Law of Succession Act** which empowers the court to adjudicate on disputes and make such orders or decrees that may be expedient.
8. The court in exercising its jurisdiction has to consider the circumstances pertaining, balance the interest of the parties and exercise the discretion judiciously.

9. It is expected that where there is more than 1 administrator the co-administrators will consult each other and objectively arrive at decisions, in matters relating to the estate. They should also go further to inform and or consult other beneficiaries in arriving at decisions.

10. The application before court is seeking to expend a colossal sum of money. Administrators ought to discuss the matter and involve other beneficiaries however from correspondences made available, consultations were on-going before the application was filed and as such no expenses ought to have been incurred before arriving at a consensus.

11. I agree with the respondent's counsel that advocate costs ought to be agreed upon or taxed. Similarly the engagement and fees for the investigator should have been discussed and agreed upon.

12. For the above reasons the application for now is declined in its entirety.

13. Costs to the respondent.

Dated and Delivered in Nairobi on this 16TH day of January, 2020

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ALI-ARONI

JUDGE