



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 1360 OF 2019

IN THE MATTER OF THE ESTATE JOHN MUTIO MUTUA (DECEASED)

ANNE WANGUI MUTUA.....APPLICANT

R U L I N G

1. This matter revolves around the estate of **John Mutio Mutua** (deceased) who died on the 29th of April 2019.
2. There appears to be a dispute on how to manage the estate as between the estranged wife of the deceased **Anne Wangui Mutua** ('Anne') and one Gabriel Nzioki Mutinda who claims to be an executor of the deceased Will. From the record, there was a divorce cause between Anne and the deceased awaiting judgement before the deceased died following a lengthy separation.
3. Anne and the deceased were married at St. Thomas Aquinas Church in Nairobi on the 4th of December, 1993 and the union has two grown up children:

Jeff Mutua a son aged 24 years &

Amy Mumbua a daughter aged 21 years
4. The applicant and her son moved the court for grant of letters of administration on the 24th of October 2019, a grant is yet to issue. There is also a claim that the deceased left behind a Will, which was known to the applicant even as she petitioned the court. Probate is yet to be filed.
5. The issue of the Will is not before this court. In issue for now is the application by Anne dated 9th December 2019 seeking for the following prayers:

i. (Spent)

ii. That an order do issue directing the Branch Manager; Barclays Ban- Barclays Plaza, Standard Chartered Bank- Yaya Centre Branch and Co-operative Bank – Head Office to avail to this honourable court the credit balance for the deceased's bank accounts (John Mutio Mutua – ID No. xxxxxxx).

iii. That upon granting prayer No. ii above, the 1st Petitioner ANNE WANGUI MUTUA herein be granted access and control to the following Bank accounts in the name of the deceased (JOHN MUTIO MUTUA-ID No.xxxxxxx): -

- a. Barclays Bank Premier Banking Account No.xxxxxx held at Barclays Plaza Branch.**
- b. Standard Chartered Gold Visa Account No.xxxxxx held at Yaya Centre Branch.**
- c. Standard Chartered Priority Account Number No.xxxxxxxx held at Yaya Centre Branch.**
- d. Cooperative Bank Account**

iv. That an order be made by this honourable court allowing the 1st Petitioner herein: ANNE WANGUI MUTUA to

withdraw from the deceased Bank Accounts namely: Barclays, Standard Chartered and Cooperative Bank, such sums of money to the tune of Kshs.3,688,388.30 to cater for the deceased daughter's education at the University of the Witwatersrand Johannesburg and made up as follows:-

a. Outstanding fees balance for the year 2019 of R. 64,720.83 X 10 (Kshs.647,208.30/=).

b. School fees for the year 2020 – R.249,650.00X10 (Kshs.2,496,500.00/=).

c. Medical cover (yearly) – R. 5,268.00 X10 (Kshs.52,680/=).

d. Travelling costs for two trips in the year 2020 to and from Johannesburg at – USD. 1620X 100 (Kshs.162,000/=).

e. Allowance for the year 2020 –R.24,000x 10 (Kshs.240,000/=).

f. School shopping for the 1st semester running from January to June 2020 – R.4,500x 10 (Kshs.45,000/=).

g. School shopping for the 2nd semester running from July – December 2020 R.4,500 x 10 (Kshs.45,000/=). Which fees are to be paid in favour of Amy Mutua, student Number 1880920 in the account provided by the institution.

vi. That all the rent that has been collected from the property known as NEW KITISIRU L.R. No. KIT/101/209F by KAMAU KINGA trading as M/s KAMAU KINGA & CO. ADVOCATES be immediately paid out to ANNE WANGUI MUTUA and all future rent be collected for the benefit of herself and the Deceased's children.

vi. That the said KAMAU KINGA trading as M/s KAMAU KINGA & Co. Advocates be ordered to give a full account of all the rent collected from the property known as NEW KITISIRU L.R. No. KIT/101/209F.

6. The letters of administration is yet to issue as necessary documents sought for by the court have not been availed and therefore the estate has no administrators.

Equally the executor of the alleged Will is yet to move the court for probate and therefore there is no executor duly appointed.

7. Therefore, the court has no basis upon which to grant prayers 2, 3, 5, and 6 in favour of the applicant or any other person for the reasons given above. The prayers are therefore denied.

8. As for prayer 4, there is a daughter, Amy in school, a dependant of the deceased and though the application is not procedural she has a right to seek for school fees and maintenance under **Section 29** of the **Law of Succession Act** and I am prepared to consider the same since even under the alleged Will all cash is bequeathed the said daughter and her brother. Secondly, I do not sense any serious opposition to payment of the school fees and upkeep. To grant the prayer in any event, would be in the interest of justice in the circumstances of the case.

9. Therefore, this court now directs and order that all school fees (arrears 2019 and current 2020), travel costs for 1 trip, yearly medical cover, shopping & Allowance for 3 months for **Amy Mumbua** be paid from estate of the deceased.

School fees be paid directly to the University of the Witwatersrand Johannesburg.

10. In order to achieve (9) above the managers of the banks herein below listed will forthwith release the most recent statements of accounts reflected below to the court only once pending further orders through Gabriel Nzioki Mutinda

i. Barclays Bank Premier Banking Account No.xxxxx,

Barclays Plaza Branch.

ii. Standard Chartered Gold Visa Account No.xxxxxxxxxxx,

Yaya Centre Branch.

iii. Standard Chartered Priority Account Number No.xxxxxxxxxxx

Yaya Centre.

iv. Cooperative Bank Account

11. No order as to costs.

12. Mention for further orders on 20th January, 2020.

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

.....

ALI-ARONI

JUDGE