



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 123 OF 2017**

**IN THE MATTER OF THE ESTATE OF JK DECEASED**

**RULING**

1. The application subject matter of this ruling is dated 10<sup>th</sup> May, 2019 brought by JNL, a sister and named beneficiary of the will of JK deceased.
2. Prayers 1 and 2 of the said application are spent. Relevant is the prayer for the release of 50% of her bequest pending determination of the probate cause on account of age, health care and other basic needs.
3. The application met only one objection from DN to the effect that the confirmation and eventual distribution is being delayed by beneficiaries due to their refusal to comply with this court's order to submit to a DNA test, secondly the applicant has not demonstrated that she is too ill so as to require interim payment.
4. The deceased herein Hon. JK died testate at Nairobi, at the Agha Khan hospital on 25<sup>th</sup> December, 2016. His estate is yet to be distributed due to numerous applications pending in court.
5. The applicant is aged 77 years, the deceased, her brother bequeathed her a substantial amount of money. She claims to be sick and generally requires money for her upkeep. She avers that there is need for her to take care of her health before it completely fails.
6. The court is empowered by Section 47 of the Law of Succession Act to entertain any application and determine any dispute and to make any order that may be expedient. This provision is re-emphasized under Rule 73 of Probate and Administration rules and therefore the application before is proper.
7. The court is of the view that no prejudice is likely to be suffered by DN or any other person for that matter, should the court allow the applicant in her circumstances to enjoy part of her bequest.
8. I therefore do order and direct the executors pending confirmation of the Grant of Probate , and in line with paragraph 8(1)(4) of the deceased to pay the sum of Kshs.2 Million to JNL being part of her bequest.
9. Costs in the cause.

**DATED, SIGNED and DELIVERED at NAIROBI this 13<sup>th</sup> DAY OF February, 2020.**

.....

**ALI-ARONI**

**JUDGE**