



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO.819 OF 2015

IN THE MATTER OF THE ESTATE OF ARTHUR NGANGA NJUGUNA NDORO (DECEASED)

PHYLIS MUTHONI APPLICANT.....APPLICANT

JOYCE MBAIRE NDORO.....ADMINISTRATOR

DAMARIS NJERI NDORO.....BENEFICIARY

RULING

1. This is a ruling on application dated 8th July 2019. It seeks an order to release kshs 308,000 (as amended on 23rd January 2020) from account No. [xxxx] held at **Jamii Bora Bank Limited** in the names **Ndubi & Co. Advocates and Mutonyi Mbiyu & CFFo. Advocates** being maintenance during advocates training program from February 2020 to November 2020.
2. The application is supported by affidavit sworn by the applicant on 27th June 2019. She averred that she completed her law degree and started internship in the firm of **Ndungu Githuka Co. Advocates**. That she has rented a house at Isinya town and therefore needed money for rent, food, transport, clothing, medication, water, electricity and personal effects.
3. She averred that she also takes care of the home (second house) in this proceedings of her late mother who predeceased her father situated in LR No.9350 where she lives while on vacation.
4. She averred that on 25th July 2017, **Justice Ndungu** presided over a conference with parties herein and a consent order was recorded on her university fees, her maintenance and maintenance of home on LR 9350 for a period of 4 months.
5. She averred that her maintenance was fixed at kshs 112,000 for 4 months kshs 28,000 per month. She averred that she has been receiving kshs.15,000 per month for maintenance of the house.
6. In response the administrator filed replying affidavit sworn on 22nd July 2019. She averred that the applicant is not in dire need as she is being hosted by a sister to her late husband and that she is doing internship in the law firm of **Ndungu Githuka** who is the husband to her sister in-law.
7. She also averred that the home that the applicant seeks to maintain is her matrimonial home and would maintain the property as she has done all along.
8. She further averred that the applicant has harvested 215 mature trees whose sale value is kshs 500 each and therefore has money for her upkeep. She added that the applicant was allowed to till 15 acres of the land and proceeds would be sufficient for her upkeep. That the applicant has harvested the trees despite the court order barring the parties from harvesting trees; that her demand for upkeep is unjustified.
9. She averred that the other beneficiaries including herself have not been benefiting from funds in Jamii Bora Bank; that she has been forced to live on hand outs and survive on loans and has been forced to source funds to pay out debts owing from the estate which ought to have been paid from the account.
10. She prayed that the account in Jamii Bora Bank be closed and funds be transferred to account of the estate as she will provide as when is required as per her duties as administrator; that the monies held in that account should not be utilized by the applicant alone; that some of the beneficiaries are not enjoying money in the account despite the fact that they are not employed and did not have benefit of the deceased pay their college and or tertiary education.
11. **Damaris Njeri Ndoro** filed replying affidavit on 9th December 2019 in response to the applicant's application. She averred that she is the daughter of the deceased herein and recognized the applicant as her sister and beneficiary of the deceased's estate. She averred that her late father and one **Magdaline Wambui** who is now deceased begot the applicant.

12. She averred that the applicant is entitled to the estate of the deceased but should benefit like any other beneficiary. She opposed release of the maintenance money for applicant during pre-pupilage. Reason for opposing the release before her official admission to school of law is from information she got from the administrator who is her mother that she is staying with her aunt and she is not living in a rented house in Isinya as alleged.

ANALYSIS AND DETERMINATION

13. From averments herein, the money that the applicant had sought for upkeep for pre-pupilage period was abandoned. The applicant now seek up keep for the period she will be at the Kenya School of Law. She has produced admission letter which shows she will be studying at **Kenya School of Law** from February 2020 to November 2020. This prompted amendment of prayers sought by consent of parties. Counsel for the applicant confirmed that tuition fee for Kenya School of law has been paid by consent of parties. What is in dispute is money for her upkeep.

14. The administrator alleged that the applicant has harvested trees which should be sufficient to maintain her but no prove of harvest and sale of trees was provided to court. No other source of income for applicant's upkeep for 8 months at Kenya School of Law has been stated.

15. On perusal of the file I confirm that on 26th April, 2017 parties agreed that kshs 125,000 be released to JKUAT being university fees for applicant herein and kshs.43,700 to Amboseli Institute of Hospitality and Technology in respect of one **Rahab Muthoni**.

16. By consent recorded on 25th July 2017, parties agreed that letters of administration to issue to the administrator herein **Joyce Mbaire Ngoro** and that she would not interfere with applicant's occupation of LR 9350; that the applicant was to cultivate 15 acres of the land and arrears of rent from the said land to be deposited in Jamii Bora Bank Ltd in the names of Advocates of administrator and applicant. Further the court ordered release of kshs 119,592 as fees for JKUAT and kshs 112,000 be to applicant being maintenance expenses and kshs.60,000 to applicant upkeep of house in LR 9350 for 4 months.

17. From the foregoing, it is clear that parties consented to release of money for maintenance of applicant while in college at kshs.28,000 per month. It is not disputed that she will need money for maintenance while at Kenya School of Law. The applicant's advocate has asked for the same amount of kshs 28,000 per month. There is no prove that she harvested and sold trees. There is therefore no reason to deny her maintenance while at Kenya School of Law.

18. On upkeep of the house in LR No.9350, parties consented that applicant would occupy the house and kshs 15,000 be released from the account for upkeep of the house. No sufficient reason has been given to warrant change of initial arrangement that was arrived by consent of the parties.

19. From the foregoing I find application merited.

20. FINAL ORDERS

1. **Kshs 308,000** be released from account No. [xxxx] held at **Jamii Bora Bank Limited** for maintenance of the applicant for the 8 months she will be at the Kenya school of law (from February 2020 to November 2020).

2. **Kshs 15,000** per month be released to the applicant for upkeep of house in LR.No.9350.

3. Costs in the cause.

Ruling dated, signed and delivered at Nakuru this 6th day of February, 2020.

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:

Jeniffer – Court Assistant

No appearance for Applicant

No appearance for Administrator

Ms. Ngugi holding brief for Adoch for Beneficiary Damaris Njeri