



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

MISC SUCC. CAUSE NO. 2 OF 2017

IN THE MATTER OF THE ESTATE OF JKC (DECEASED)

SWG.....APPLICANT/OBJECTOR

VERSUS

TKG.....1ST RESPONDENT

KKC.....2ND RESPONDENT

RULING

1. By Summons dated 20/11/2017, the applicant to a Summons for Revocation of Grant seeks interim relief for preservation of the estate assets named in prayer (2) thereof; to restrain the administrators from interfering or dealing with the said property; and for payment of Ksh. 300,000/- out of funds held by Public Trustee at Eldoret for the benefit of minor child of the deceased.

2. The application is expressed as seeking the protection of the estate for the benefit of the child, who is said to be the only child of the deceased, and for provision of upkeep school fees and medical insurance. The applicant is the mother of the child who though claiming to have cohabited with the deceased as husband and wife does not appear to seek a share of the estate for herself or her maintenance. At paragraph 16 of her supporting affidavit, the applicant gives the object of the Summons “that the Grant issued to the petitioners be revoked or annulled and I be enjoined as a petitioner in the estate of my late husband JKC to protect the interest of RJK who is still a minor and needs to be provided for”.

3. In their response, the administrators while admitting that their deceased brother had a daughter named RK whose mother is SWG, the applicant herein, denied that she was ever married to the deceased and asserted that she was in fact married to another person with whom they had a child before the death of the deceased. The administrators also asserted that they had educated the child and offered to transfer some shares of the estate to the child when she attained the age of majority. They stated that the nominee for the provision benefit at the deceased’s place of work was his uncle and the same did not form part of the estate. They explained that the land assets had no quarrying activity going on and having been closed long ago and the (3) heads of cattle had been sold by the deceased before he died and they had no details as to whereabouts of the shares at KCB, Safaricom and Kenya Airways.

4. The Applicant has by further affidavit of 27/1/2018 requested any other things that the Public Trustee need the sum of Ksh.1,121,040/- from one estate of the deceased. That the Administrator had only paid fees for the child from class (5) to class (8), and that the child’s maintenance needs includes “school fees, shelter, food, clothing, education and all educational needs, together with medical needs (insurance) which clearly can be met through her late father’s benefits”.

5. At the hearing of the application, Counsel made out submissions on the respective contentions of the parties. Counsel for the Respondents offered to have the respondent pay Ksh. 79,400/- being the annual school fees for the year 2018 together with Ksh. 20,000 per year for any school related expenses, the amounts being paid directly to the school and the applicant on the basis of her parental responsibility to the child meets other expenses on the child while on school holiday.

6. Counsel for the applicant cited the applicant's ill health and stated that she would be unable to provide for the child and emphasized that she did not seek the fund for her own benefits but for the maintenance of the child.

Determination

7. I have considered that whether the applicant was a dependant of the deceased is not before the court and that the question of the status of pension benefits as part or otherwise of the estate of a deceased is matter for determination in the main Summons for Revocation of Grant.

8. If the benefits are adjudged to be outside the estate of the deceased as urged by Counsel for the respondents, then the administrators may apportion the remainder of the estate as appropriate to make good any deductions in the meantime.

9. The child's interests are paramount and there being no contest that she is a child of the deceased, appropriate provision may be made in the interim before the final administration and distribution of the estate. The Court notes that she is the only true heir of the deceased in accordance with section 38 of the Law of Succession Act.

10. Although parental responsibility is a shared responsibility, if the one parent is shown not to be able to provide for the child, her child's welfare ought not to suffer on this account, if it can otherwise be provided for so long as this arrangement is made is not designed to profit or benefit the parent who does not discharge her parental responsibility and it is only geared to supporting the welfare of the child.

11. In this case, while it has not been shown that the applicant is irresponsible so that monies meant for the child may be squandered and misappropriated by the applicant, adequate safeguard should be taken so that the funds released for the child should go only to benefit of the child. The applicant has not established her marital status to the deceased and thereby to be entitled to maintain once under section 35 of the Law of Succession Act under a life interest, in the intestate estate.

12. I consider that the payment as proposed by Counsel for the Respondents of the entire school fees of Ksh. 79,400/- for the year together with the payment of an additional sum for the provisions of School related expenses at Ksh. 20,000/- is reasonable for the child's educational needs.

13. For the child's out of school needs by way of clothing, food, medical and shelter, the court considers a sum of Ksh. 100,000/- per year to meet the justice of the case. To ensure that the money is utilized for the benefit of the child and not for the exclusive use of the applicant, the money should be disbursed periodically as need arises through a joint account to be established in the joint names of the Counsel for the parties with liberty to apply in the event of disagreement.

14. As the immovable assets of the estate are shown to be registered in the names of the deceased, there is no danger of disposal before confirmation of Grant in the succession cause and this aspect of the matter may await the hearing of the Summons for Reservation of Grant herein.

15. On a balance of probabilities on the evidence presented, the Court accepts the Respondents' position that the (3) heads of cattle were disposed by the deceased and without any details as regards the KCB and other shares, the Court does not make any order thereon. Moreover, a prayer for account against the administrators is one of the prayers of the Summons of Revocation of Grant herein and the same shall be dealt with at the full hearing of the Summons.

16. In view of the minor interests herein, the application for Revocation of Grant should be heard expeditiously and Counsel for the respondents agreed to file the Respondents' preliminary objection as to jurisdiction of the High Court in view of the Magistrates Court's Act, 2015 and thereafter directions to be taken as to hearing of the matter.

Orders

17. Accordingly for the reasons set out above, the Court makes the following orders on the interlocutory prayers of the Summons for Revocation of Grant dated 20/11/2017.

i. The sum of Ksh. 99,400/- being the annual school fees for the child together with provision for school related expenses while in school at [particulars withheld] Academy, Nakuru shall be paid directly to the School by the Public Trustee out of monies held for the estate of the Deceased herein.

ii. The sum of Ksh. 100,000/- shall be paid by the Public Trustee to a joint account in the names of Counsel for the Applicant and Counsel for the Respondents for the benefit of the maintenance of the child of the deceased to be paid periodically in the course of the year as need arises with liberty to apply on either party.

iii. The Summons for Revocation of Grant shall be mentioned for directions as to hearing on 12/3/2018.

iv. Costs in the cause.

DATED AND DELIVERED ON 6TH DAY OF FEBRUARY, 2018

EDWARD M. MURIITH

JUDGE

Appearances: -

Ms. G C Nyongesa Advocates for Applicant/Objector

M/s George Kirumba Mbiyu & Co Advocates for the respondents