



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 651 OF 2012**  
**IN THE MATTER OF THE ESTATE OF S W M (DECEASED)**

T W W.....1<sup>ST</sup> PETITIONER

M M W.....2<sup>ND</sup> PETITIONER

-VERSUS-

D N W.....1<sup>ST</sup> RESPONDENT

J K W.....2<sup>ND</sup> RESPONDENT

E W W.....3<sup>RD</sup> RESPONDENT

**RULING**

**INTRODUCTION**

The deceased, **S W M** died on 15<sup>th</sup> November 2011 intestate.

The deceased had two wives

The deceased's family comprises of;

**1<sup>st</sup> House**

**Jane Njambi 1<sup>st</sup> wife (deceased)**

**D N W -Daughter**

**J K W -Son**

**E W W -Daughter**

**2<sup>nd</sup> House**

**T W W -2<sup>nd</sup> Wife**

**V N W -Daughter**

**M N W -Daughter**

**M M W -Son**

**R A W W -Daughter**

**E M W -Son**

**B M W -Son.**

The Respondents filed citations to petitioners in **Succession Cause 817 of 2012** and later consolidated with the instant **Succession Cause 651 of 2012**. The grant of letters of administration was issued to E W W and T W W as co-administrators on the 6<sup>th</sup> of February 2015. Summons for confirmation of grant was filed on 10<sup>th</sup> March 2015.

### **APPLICATIONS**

There are two applications for determination. The Petitioners filed application dated 21<sup>st</sup> February 2017 while the Respondents filed the application dated 10<sup>th</sup> April 2017.

The application dated 21<sup>st</sup> February 2017 sought the following orders:

- 1. That the Court be pleased in the interim to set aside the oral ex-parte orders issued on the 8<sup>th</sup> day of February, 2017 pending the hearing and determination.***
- 2. That upon granting prayer 1 above, the Court be pleased to stay the orders of this Honourable Court granted on the 8<sup>th</sup> February, 2017 pending the hearing and determination of this Succession Cause.***
- 3. That upon granting prayer 1 and 2 above, the Court be pleased to establish the beneficiaries of the Estate of the deceased.***
- 4. That upon granting prayers 1, 2 and 3 above the Court be pleased to establish the properties of the deceased that are available for distribution.***

M M W in his Supporting affidavit dated 21<sup>st</sup> February 2017 deposed that he was acting on behalf of the deceased's other children from the 2<sup>nd</sup> house namely V N W , M N W, R A W, E M W and B M W . He deposed that this Court issued oral Ex-Parte orders on 8<sup>th</sup> February 2017 which orders are so prejudicial to the Applicants & beneficiaries as shown by annexed copy of the order. It is proper to set aside the orders in order to determine the beneficiaries once and for all and establish the properties available for distribution once and for all as some properties are held jointly with other people. He submitted that the beneficiaries of the estate as well as the mode of distribution should be established so as to administer the estate wholly and not in piece meal.

On 13<sup>th</sup> April 2017, the 2<sup>nd</sup> Administrator/3<sup>rd</sup> Respondent E W W in reply to the above, filed a Replying Affidavit and stated that the application should be dismissed with costs as the application was filed in contravention of this Court's express orders issued on various dates directing *inter alia* that no more applications shall be filed and to pave way for summons for confirmation of grant to be heard and determined.

The said Court orders not to file further applications but dispose of summons for confirmation of grant were issued as follows;

- a) By Hon Justice L. Kimaru on 28<sup>th</sup> July 2014***
- b) Hon Justice Lady Justice R.Ougo reiterated on 10<sup>th</sup> February, 2015***
- c) Hon Lady Justice R.Ougo reiterated for the 2<sup>nd</sup> time on 17<sup>th</sup> September 2015***
- d) Hon Lady Justice R.Ougo reiterated for the 3<sup>rd</sup> time on 22<sup>nd</sup> February 2016***
- e) Hon.Lady Justice M.Muigai on 20<sup>th</sup> April 2016 directed a hearing date for the summons for confirmation be obtained from the Registry***

The second application is a Notice of Motion dated 10<sup>th</sup> April 2017 brought by D N, J W and E W W and they sought the following orders:

- 1. That the instant application be certified urgent and heard ex-parte in the first instance.***
- 2. That an order of committal to prison be made against M M W the contemnor herein for such period as this Honourable Court may deem fit and just in that the said contemnor is in contempt of the order made by this Honourable Court on the 8<sup>th</sup> of February, 2017 in that he has frustrated, prevented and deliberately obstructed the court appointed estate agents M/S Lloyd Masika Ltd from collecting rent from the suit premises situated on LR. NO. 209/9036-38([Particulars Withheld] CENTER)***
- 3. That the contemnor meets the costs of this application***

The grounds adduced by the applicants as on the face of the application and the Supporting affidavit are that the contemnor and the first administrator have been receiving all the rental income from the suit premises as well as income generated from the deceased's businesses running into millions of shillings.

This Court, on 8<sup>th</sup> February, 2017 appointed M/S Lloyd Masika Ltd, as the estate agents to collect rent from the suit premises. In total disregard of the Court order, the contemnor has obstructed the said estate agents from performing their role by physically assaulting their Manager, **MR. JULIUS NJUGUNA** and Process Server **CHRISTOPHER GITHUI**. He further threatened to evict the tenants and/or lock their shops should they pay rent to the appointed agents

The contemnor was served with a copy of the order dated 8<sup>th</sup> February, 2017 by the Process Server **CHRISTOPHER GITHUI** on 28<sup>th</sup> February 2017 and there is an affidavit of service filed on 15<sup>th</sup> March 2017 confirming service. Thereafter, the Contemnor collected all the orders and the forwarding letters thereof that had been served upon him and the tenants and returned them to the offices of M/s J.M Njenga & Co Advocates.

The Contemnor's actions amount to blatant disregard of the Court's orders and amount to sheer impunity and total disregard of rule of law.

M M W objected to the application through an affidavit dated 14<sup>th</sup> July, 2017 deposed that he was not served with the Orders and that he did not assault anyone and therefore has not disregarded any court orders as he was not aware of the same. He also submitted that the tenants have been paying their rent via cheques directed to [particulars withheld] Centre where he is not a director and therefore is not liable for any directions issued by them.

### **PROCEEDINGS**

After parties sought recusal from the previous Court from hearing the matter, this Court mentioned the matter on 2<sup>nd</sup> March 2016. The Court read through the Court file and outlined the applications heard, List of assets and gave directions on 4<sup>th</sup> March 2016.

On 22<sup>nd</sup> March 2016, Counsel for Petitioners filed application to cease acting for the Petitioners. It was alleged they came to Court then left. The Court issued orders of Summons to be served to the Petitioners by the Deputy Registrar of Family Division to attend Court on 20<sup>th</sup> April 2016.

On the said date, despite service of Summons to the 1<sup>st</sup> Administrator, T W W on 18<sup>th</sup> April 2016 at 11.30 am as confirmed by the Court Process Server, the Petitioners did not appear in Court nor provide any reasons for the Court to consider, this Court granted the application of 29<sup>th</sup> February 2016 that Counsel on record for Petitioners cease acting, the Petitioners seek other legal representation and the application of summons for confirmation of grant be set down for hearing on a date obtained from the Registry.

On 16<sup>th</sup> November 2016, all parties were present, the 1<sup>st</sup> administrator informed Court that they required time to obtain legal representation and could not proceed with summons for confirmation and they objected to list of beneficiaries, list of assets and proposed mode of distribution of the deceased's estate.

The Respondent's Counsel informed Court that as the summons for confirmation of grant were delayed the children of 1<sup>st</sup> family were in dire straits and financially disabled. The 2<sup>nd</sup> family retained all properties of the deceased's estate and held both homes in Muthaiga and Ruiru while the children of the 1<sup>st</sup> family are destitute and they relied on their 1<sup>st</sup> born sister to take care of them. If summons for confirmation hearing is delayed then reasonable provision be made.

This Court delivered Ruling on 10<sup>th</sup> December 2016 to the effect that while the Petitioners were granted leave to obtain legal representation and to file protests to the summons for confirmation, the 1<sup>st</sup> family in terms of Court orders by **Hon Justice L. Kimaru of 5<sup>th</sup> March 2013 and Hon Lady Justice R Ougo of 9<sup>th</sup> February 2015** should have school fees for E W W paid from the deceased's estate and bank accounts. Also Ksh 100,000/= shall be paid to D N W for rent and upkeep of J W.

On 7<sup>th</sup> December 2016, the Court orders of 10<sup>th</sup> December 2016 were not complied with and the Respondents through Counsel informed the Court that the Petitioners were building another house in Muthaiga and another building in Gikomba from the proceeds of rent collected from the assets of deceased's estate. They sought valuation of the assets that comprise of deceased's estate.

The Court issued orders that the Deputy Registrar was to write to the respective banks directly to effect Court orders of 10<sup>th</sup> December 2016 and each party to propose 2 estate agents.

On 8<sup>th</sup> February 2017, a date obtained by both parties through Counsel and service was effected as per affidavit of service of 8<sup>th</sup> February 2017. The Respondents confirmed that the bank honoured orders of this Court of 10<sup>th</sup> December 2016 and paid money to the Respondents for school fees and expenses, house rent and subsistence.

However, again the petitioners were not present, no reasons were advanced and their proposals for estate agents were not availed. Therefore, this Court granted the Applicant's application of appointment of Lloyd Masika Estate agents and Valuers to collect rent, pay utilities and repair of the houses. The Estate Agents were to pay their fees from the accounts that contain proceeds for the estate upon taxation by Deputy Registrar of Family Court. The balance be distributed between the 2 houses; namely

**a) 1st House; Ms D N W, J K W & E W W**

**b) 2nd House; Mrs T W & Mr M W**

The Estate Agents & Valuers are to account to the Court, beneficiaries by filing monthly statements until confirmation of grant application is heard and determined. The Court granted order that the Court file be placed in the Strong Room for safe custody.

On 14<sup>th</sup> March 2017, instead of hearing and determination of the summons for confirmation the 2 applications were filed the one of 21<sup>st</sup> February, 2017 for setting aside Court orders of 8<sup>th</sup> February 2017 and the application of 10<sup>th</sup> April 2017. The Respondents confirmed that the funds availed pursuant to the Court Order of 10<sup>th</sup> December 2016 were spent and new claims of school fees and expenses, house rent and lunch and transport expenses were due. The Court ordered formal application for dependency be filed by Petitioners.

**SUBMISSIONS:**

On 18<sup>th</sup> July 2017, Counsel for Petitioners addressed this Court on the application of 21<sup>st</sup> February 2017 as follows;

The oral *ex parte* orders of 8<sup>th</sup> February be set aside as the 1<sup>st</sup> order excluded other beneficiaries who were included in the summons for confirmation of grant application.

The 2<sup>nd</sup> Order that states that Lloyd Masika Valuers & Estate Agents are to collect rent and distribute the balance after payment of utilities and repair to the 2 Houses; 1<sup>st</sup> House D N W , J K W & E W W 2<sup>nd</sup> House Mrs T W & Mr. M W cannot be implemented as the following properties [Particulars withheld] Feeds & [Particulars withheld] Centre ( not included) are properties jointly owned by S W M (deceased) and T W W w/o S W as shown by Certificate of Business Names Act annexed to the decree.

The Petitioners claimed that the properties cannot be the subject of collection of rent until the determination of whether the said Companies are part of the assets that comprise of the deceased's estate.

They proposed that Lloyd Masika can only collect rent for 50% of the deceased's portion only which again has not been determined.

The matter should instead proceed to hearing and determination of Summons for confirmation. A date be fixed for hearing of summons for confirmation of grant.

The Respondents objected to the application and indicated that the application was designed to derail and delay the hearing and determination of summons for confirmation of grant.

The alleged properties said to be Companies and jointly owned are not indicated as such in the Petition filed by Petitioners on 24<sup>th</sup> May 2012. Instead, they declared the deceased's assets among others as;

**1) L.R No [Particulars Withheld] (where [Particulars Withheld] Centre is situated)**

**2) L.R. No / [Particulars Withheld] (where [Particulars Withheld] Feeds is situated)**

If the properties and businesses are Companies in the name of Deceased and 1<sup>st</sup> Administrator then documents to that effect ought to be produced in Court and they should have been in existence during the deceased's life and not prepared after the deceased's demise.

In 2004, when the deceased defaulted in loan repayments, the Bank filed suit namely;

**SAMUEL WAINAINA T/A/[Particulars Withheld] CENTRE CHIEF MAGISTRATE'S COURT NAIROBI NO 343 OF 2004.**

The Suppliers of [Particulars Withheld] Feeds sued for monies unpaid; they sued the administrators then namely;

**T W & D N W**

**HCCC 259 OF 2011 HIGH COURT CIVIL DIVISION OF THE HIGH COURT**

If the properties are Companies as alleged by Petitioners then the above stated suits ought to have been in the Companies names.

The said properties consist of rental houses and shops as depicted in photos annexed to D W affidavit of 24<sup>th</sup> August 2012 marked **DW2**. The rent from the flats and shops has been and is collected by Petitioners specifically, M W after the deceased's death and solely used by the Petitioners only to the exclusion of 1<sup>st</sup> house and it amounts to intermeddling with the estate of the deceased. The problem is that for 6 years the 2<sup>nd</sup> family has benefited from the estate to the exclusion of the 1<sup>st</sup> family.

The date of appointment of Estate Agents was by consent of the parties and each of them was served and all were aware of the date. The Petitioners offered no proposals of Estate agents for the Court to consider.

The Court Order made reference to distribution of balance of rent proceeds to 2 houses and omitted the 4 children out of the country. Their interests are covered as M W always acts on their behalf and are named in the Petition and Summons for Confirmation. However, the order

maybe amended to include the beneficiaries not named.

There is no legal basis to set aside the Court order as there is no fraud, collusion, error or contrary to public policy, issue raised with regard to the order or proof of the same.

The children of the 1<sup>st</sup> house are children of the deceased and are entitled to benefit from their father's estate just like family in the 2<sup>nd</sup> house.

There is deliberate delay in hearing and determining the summons for confirmation filed in 2015 as each time the same is for hearing, the Petitioners file applications and/or bring in new/different lawyers and the 1<sup>st</sup> House members continue to live desperate lives while the 2<sup>nd</sup> house members live lavish lives from the estate of the deceased.

M W is building in Ruiru on the deceased's property and also building in Muthaiga and these developments are not included in the list of assets and income generated not disclosed distributed or accounted for.

For the sake of justice and fairness the Court orders of 8<sup>th</sup> February 2017 should be retained.

The Petitioners replied that the Petition filed on 24<sup>th</sup> May 2012 disclosed all parties/beneficiaries of the estate and some are omitted in the said Court order.

There are no irregularities that have been committed to the deceased's estate, no tangible evidence was adduced and the allegations made are hearsay evidence

The Court order of 8<sup>th</sup> February 2017 should be set aside to determine list of beneficiaries, list of assets and mode of distribution.

### **DETERMINATION**

This Court has outlined the chronology of events culminating to the Court orders of 8th February 2017 so as to appreciate the basis for the said orders being issued /granted.

With regard to the application of 21<sup>st</sup> February 2018, the said orders were not oral as confirmed by Petitioners who attached a copy of the decree. The said orders were as a result of hearing date obtained by parties consent; on behalf of the petitioners, Mr Ismael Advocate represented them and took the date. The Court indicated the said Mr. Ishmael had not filed notice of appointment but it was confirmed, Mr. M W was in Court then left and Mrs T W was duly served as shown by affidavit of service filed on 8th February 2017. In the absence of any reasons or explanation for absence of the parties, this Court proceeded *ex parte* and issued the orders.

This Court will not determine any of the filed applications of 21<sup>st</sup> February 2017 & 10<sup>th</sup> April 2017 because;

- a) The parties filed applications without leave of the Court and in contravention of Court orders of 10<sup>th</sup> February 2015, 17<sup>th</sup> September 2015, 22<sup>nd</sup> February 2016 and 20<sup>th</sup> April 2016 that no more applications shall be filed the summons for confirmation to be heard.***
- b) There has been inordinate delay by parties to hear and determine the Summons for Confirmation.***
- c) The Petitioners have blatantly been in flagrant disregard of Court orders; they have not filed Protests to summons for confirmation as per the order of 10<sup>th</sup> November 2016 & 19<sup>th</sup> December 2016.***
- d) The Petitioners did not comply with orders of this Court to provide proposed Estate agents for consideration for appointment as ordered on 7<sup>th</sup> December 2016 and no reasons were relied to Court.***
- e) The Court proceeded ex parte after the Petitioners being aware of the date and served failed to attend Court on 8<sup>th</sup> February 2017.***
- f) There are allegations of the beneficiary M W roughing up Lloyd Masika representative and Court Process Server which is a criminal offence; upon them serving Court order and trying to take over the assets that comprise of the deceased's estate in compliance with the Court order.***
- g) The Court after hearing the application of 10<sup>th</sup> April 2017 and 21<sup>st</sup> February 2017 issued interim orders of 18<sup>th</sup> July 2017 to provide school fees for E W at Methodist University upon until completion of her course, payment of rent arrears of Ksh 102,000/- for J W and Ksh 100,000/- for rent when due and subsistence and Ksh 30,000/- for E W's lunch and transport expenses; and D W Ksh 30,000/- pending the Ruling of this Court. The Deputy Registrar wrote to the banks and to date the orders are not complied with and no explanation was provided.***
- h) The Petitioners; 2<sup>nd</sup> House have sole control of the estate of the deceased to the exclusion of the 1<sup>st</sup> House and continue to intermeddle with the estate of the deceased.***

## LAW:

Section 4(1) of the Contempt of Court Act, 2016 provides;

*civil contempt means willful disobedience of any judgment, decree, direction, order or other process of a court or willful breach of an undertaking given by a court.*

**In the case of ECUNET WIRELESS KENYA LTD VS MINISTER FOR INFORMATION AND COMMUNICATION OF KENYA & ANOTHER [2005] 1 KLR 828, Ibrahim J as he then was, stated as follows:**

*“It is essential for the maintenance of the Rule of Law and order that the authority and the dignity of our court are upheld at all times. The Court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against or in respect of whom, an order is made by Court of competent jurisdiction, to obey it, unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or void”*

## ANALYSIS:

The estate of the deceased has not been distributed since 2012 and the beneficiaries have engaged in accusations and counter accusations in form of series of applications. The summons of confirmation stalled from 2015 to date.

From the evidence on record, the assets that comprise of the deceased's estate are held and dealt with by the 2<sup>nd</sup> house exclusively to the detriment of the 1<sup>st</sup> family.

There is no dispute as to the beneficiaries of the estate as they are all named in the petition filed on 24<sup>th</sup> May 2012 and summons for confirmation of grant application filed on 10<sup>th</sup> March 2015. Although the 4 children were not named in the Court order of 8<sup>th</sup> February 2017 they are entitled to the balance of the collected rent. This Court amends the Court order of 8<sup>th</sup> February to include all beneficiaries as named in Petition and Summons for confirmation of grant.

With regard to assets that comprise the estate of the deceased, they are outlined by the Petitioners in the Petition filed on 24<sup>th</sup> May 2012. In recent applications the Petitioners alluded to the fact that some assets constitute joint matrimonial property registered in the deceased's and 2<sup>nd</sup> widow's joint names and or Companies.

The Respondents relied on cases filed during deceased's life and he was sued as sole Proprietor and after his demise the administrators of his estate were sued on behalf of his estate.

The issue of assets and/or joint properties and Companies shall be canvassed during hearing of summons for confirmation of grant proceedings. The Petitioners are at liberty to produce Memorandum of Association, Articles of Association and Certificate Of Incorporation of the Companies of the deceased and 2<sup>nd</sup> widow before deceased's demise and if proved to be so, such assets shall be hived off as property of the 2<sup>nd</sup> widow exclusively and not available for distribution of the deceased's estate. The Administrators of the estate according to the grant issued on 28<sup>th</sup> July 2015 and rectified on 6<sup>th</sup> February 2016, namely T W and E W and they have not jointly carried out their statutory mandate with regard to administration of the estate. This has led to the co-administrators not carrying out their duties and responsibilities as provided in **Section 79, 82 and 83 of the Law of Succession Act Cap 160**. This inaction and delay impedes the completion of the administration to the detriment of the 1st house which has not accessed or enjoyed the assets that comprise the estate of the deceased. The summons for confirmation have not been determined for 6 years to date without valid and legal grounds contrary to **Section 73 & 76 (d) (i) & (ii) of Law of Succession Act**.

The summons for confirmation of grant filed on 10<sup>th</sup> March 2015 was by 1 administrator E W under **Rule 40 of Probate and Administration Rules** and T W Co-administrator and any other beneficiary who has not signed consent to confirmation of grant has never filed any protest stating the objection to summons of confirmation of grant and alternative proposal of distribution of the estate as required under **Rule 40(6) of Probate and Administration Rules**.

**In the matter of the ESTATE OF LYDIA KARURU AHMED (DECEASED)**

**MOMBASA HIGH COURT PROBATE & ADMINISTRATION 122 OF 2001, The Court on its own motion revoked grant as follows;**

**KHAMINWA J stated as follows;**

*The administrators appear to be exercising powers other than those conferred upon them by the grant. They are now engaged in disputes as to how income of the estate has to be utilized. They have not tendered any accounts of the affairs of the estate to date...I am convinced that the fairest manner to resolve the dispute is to revoke the limited grant issued to these 2 administrators and in the interest of the beneficiaries of the estate, some of whom are minors, a full grant be taken out to enable the proper administration of the estate and fair distribution of the estate.*

## DISPOSITION:

The subject of contention is the order issued on the 8<sup>th</sup> of February, 2017. The appointment of M/s Lloyd Masika as estate agents whose mandate is to collect rent for the properties that comprise of the estate of the deceased that are income generating and then bank; after paying utilities and repair and the balance be shared equally amongst all beneficiaries.

However, the same has not been effected as the tenants direct their rent to Kamukunji Business Centre. This is allegedly due to threats imposed on the tenants by M M W a beneficiary who assaulted on the Manager of M/s Lloyd Masika thus making it difficult for the rent to be collected. This is the subject of the contempt application.

On the other hand, M M on behalf of his siblings sought orders that the Court set aside the orders issued on the 8<sup>th</sup> of February 2017. The two houses therefore do not seem to agree on how the rent should be collected or the distribution of the estate altogether which has led to the disregard of court orders by one of the parties thus impeding the completion of the administration of the estate, and the 1<sup>st</sup> house remains destitute

while the 2<sup>nd</sup> family intermeddles with the estate and exclusively enjoys income and proceeds of the said estate. Despite various Court Orders, the beneficiaries have not complied and there is acrimony amongst them resulting in a stalemate. This Court cannot condone this conduct and for these reasons the grant is revoked.

**Section 66 of the Law of Succession Act** provides the order of preference in relation to whom the letters of Administration should be granted. It provides as follows:

***When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-***

***(a) surviving spouse or spouses, with or without association of other beneficiaries;***

***(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;***

***(c) the Public Trustee***

Further, **Section 7 of the Public Trustee Act, Cap 168** grants the court the discretion to issue letters of administration to the Public Trustee and it stipulates as follows:

***Where the particular circumstances of any case appear to the court so to require, the court may, if it thinks fit for reasons recorded in its proceedings of its own motion or otherwise, after having heard the Public trustee, grant under the Law of Succession Act Letters of Administration to the Public Trustee notwithstanding that there are person who under that Act or any other written law would in the ordinary course be legally entitled to administer the estate of the deceased person."***

This section of the law requires that the court be guided by special circumstances. The special circumstances in this instant case are that the two co-administrators have failed to co-operate in the administration of the estate and the 1<sup>st</sup> Administrator has previously defied court orders relating to transferring of funds to the first house. The parties have also failed to agree on the mode of distribution of the assets as well as the assets that belonged to the deceased, which has made it impossible to deal with the confirmation of the grant. It is therefore important that a legally constituted, independent and impartial person/body should step in so as to ensure every beneficiary's right to the deceased's estate is protected until distribution after confirmation of grant as in this case as per **Section 40 of the Law of Succession Act**.

**The Court informs parties that Ruling delayed from July 2017 to date as from September 2017 to March 2018 this Court heard Election Petition 6 of 2017.**

## **DISPOSITION**

**Based on the above analysis, the Court disposes the Applications in the following terms:**

**1. The applications filed on 21<sup>st</sup> February 2017 and 10<sup>th</sup> April 2017 are not granted except for the order of sharing of the balance of rent proceeds by beneficiaries. By virtue of Section 99 & 100 Civil Procedure Act the order is amended to include the beneficiaries excluded;**

**a) V N W**

**b) M N W**

**c) R A W W**

**d) E M W**

**2. That the grant of letters of administration issued to T W W and E W W is hereby revoked**

3. That grant of letters of administration in respect of the estate of S W M is hereby granted to the Public Trustee
4. That the Deputy Registrar, Family Division shall inform the Public Trustee in writing within 14 days of the Ruling and serve a copy of the Ruling for ease of reference.
5. The Public Trustee shall call meeting of all beneficiaries and liaise with respective Counsel with a view to providing upkeep subsistence and school fees and school expenses as provided by Court order of 18<sup>th</sup> July 2017 within 14 days of receipt of the Court order.
6. The Public Trustee shall facilitate Lloyd Masika Estate Agents to collect rent from the rental properties outlined in the Petition and Summons for confirmation of grant; pay utilities and repair, be paid fees as taxed by Deputy Registrar Family Division and after filing report within 30 days. The balance be shared equally amongst all beneficiaries of deceased's estate. If this process is in place within 30 days then orders of 18<sup>th</sup> July 2017 maybe abandoned but the 1<sup>st</sup> family shall obtain a share of rental proceeds too.
7. The Public Trustee to facilitate from meetings amendment and/or filing of summons for confirmation if any party is aggrieved to file protests to be determined by the Court.
8. Each Party to bear its own Costs.

**DELIVERED SIGNED & DATED IN OPEN COURT ON 10<sup>TH</sup> MAY 2018**

**M. W. MUIGAI**

**JUDGE OF FAMILY DIVISION OF HIGH COURT.**

**IN THE PRESENCE OF;**

**MR NYAMWEYA FOR PETITIONERS**

**MS WAMBUA FOR RESPONDENTS**

**Ms. Wambua:** I do not agree with the Court Order to have the matter taken to Public Trustee. I intend to appeal. I need typed proceedings and Court Order.

**Court:** The same is granted.

**Mr. Nyamweya:** We will read the Court Ruling and make appropriate application.

**Court:** Granted.

**M. W. MUIGAI**

**JUDGE OF FAMILY DIVISION OF HIGH COURT**

**10/5/2018**