



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 2491 OF 1999**

**IN THE MATTER OF THE ESTATE OF SCHOLASTICA WANJIRU WANYEE**

**MARTHA NJERI & 7 OTHERS.....APPLICANTS**

**VERSUS**

**CHRISTINE WAMBUI WANYEE....1<sup>ST</sup> ADMINISTRATOR/RESPONDENT**

**STEPHEN WANYEE KAMAU.....2<sup>ND</sup> ADMINISTRATOR/RESPONDENT**

**RULING**

1. Before court is an application dated 4<sup>th</sup> December 2017 brought pursuant to **Sections 47 and 83** of the **Law of Succession Act and Rules 25(5), 73 of Probate and Administration Rules**, by 8 beneficiaries of the estate seeking that counsels initially on record for administrators namely **J. M. Njenga & Masore Nyangau & Co. Advocates** do account and refund Kshs.400,000/= and for the firm of **J. M. Njenga & Co. Advocates** to refund a further kshs.60,000/=, further the 2<sup>nd</sup> Respondent **Stephen Wanyee Kamau** do refund Kshs.128,000/= with accrued interest a sum meant for a minor beneficiary Stephen Wanyee Nyambura, the recovered amounts safe for funds payable to Stephen Wanyee Nyambura be utilised to settle outstanding debts and for the above named law firms to close all accounts opened on behalf of the estate.

2. The application was based on grounds, that the inability of the Respondents/ Administrators to work together necessitated appointment of the two law firms named above to represent them; and for an account to be opened in the joint names of the two firms where fund for the estate would be placed; an account was opened at I & M bank however the law firms failed to avail bank statements or to account when requested to do so until this court gave an order and upon scrutiny of the statements filed it was discovered that there were unproved withdrawals and some monies deposited missing.

3. The affidavit in support of the application sworn by **Martha Njeri** the 1<sup>st</sup> Applicant mainly reiterates the grounds on the face of the application and in addition she stated that counsel then on record withdrew the funds without consent and had exceeded a capped amount of agreed legal fees of Kshs.100,000/=.

4. The application was opposed by grounds of opposition filed by **J. M. Njenga & Co. Advocates** dated 6<sup>th</sup> February 2018 and replying affidavits filed by both **J. M. Njenga and Co. Advocates and Masore Nyangau Advocates** on the 6<sup>th</sup> February 2018 & 20<sup>th</sup> July, 2018 respectively. The two law firms stated that they each received a sum of Kshs.300,000/= towards their legal fees with the approval of Respondents who are the administrators of the estate. Further that they had since taxed their bill of costs and had been awarded in excess of the sums they were accused of having withdrawn from the estate account and any sums due and owing ought to be set off.

5. At the hearing of the matter counsel for the Applicant submitted that the sum of Kshs.60,000/= entrusted to J. M. Njenga to pay a surveyor was not paid, and the 1<sup>st</sup> administrator had to pay for the services. Further that the sum of Kshs.128,000/= due to the minor from the 2<sup>nd</sup> Respondent remains unpaid.

6. On his part Mr. Masore Nyangau advocate informed the court that his bill was taxed in excess of the retainer of Kshs 300,000, and since the amount of legal fees awarded to him was Kshs.646,100/= if the sum of Kshs.300,000/- is considered the estate still owed him Kshs.346,106/-. He further argued that the application was misplaced as against him and ought to have been brought against administrators/respondents.

As for Kshs.60,000/= the same involved J. M. Njenga Advocate and he is not aware whether same was paid or not. It was also his view that the other prayers were spent.

Mr. Njenga Advocate adopted Mr. Masore's submissions. He further stated that he paid Kshs.60,000/= to a surveyor though had no receipt for the same.

7. The advocates previously on record **J. M. Njenga & Co. Advocates and Masore Nyangau & Company** knew very well that the account they operated held funds for the estate and therefore in my view it follows that the two law firms owed a duty to account to the estate. I do not therefore fault the request by beneficiaries that statements and accounts be filed and refunds be made for monies unaccounted for.

8. The advocates were appointed by the administrators to act in the matter of this estate therefore that legal fees were payable. Both Counsel were asked to account for and refund Kshs 200,000 and Kshs 260,000 respectively. They were honest enough to admit that they received Kshs 300,000 each as retainer. They filed accounts and, in the process, taxed their bills. I am satisfied that Counsel have been able to account for the monies received and expended in the joint account. And since their bill of costs have been taxed in excess of the monies, they paid themselves from the account, it is only fair and prudent the said sums be deemed to have been part of legal fees due and payable. As for the sum of Kshs.60,000/= since no receipt of the same was produced by Mr. Njenga advocate to prove payment of the same to the surveyor, it will be deemed to be part of the fees already paid to him.

9. One of the statements filed by the lawyers gave an indication that the sum of Kshs. 100,282, had been paid by the 2<sup>nd</sup> administrator, the amount is not reflected in any of the bank statements. That being the position the 2<sup>nd</sup> administration is hereby directed and ordered to pay to Stephen Wanyee Nyambura Kshs 128,000. Should there be any sums due to 2<sup>nd</sup> administrator from the Estate the same may be recovered.

10. Each party will bear their own cost.

**DATED, SIGNED and DELIVERED at NAIROBI this 7<sup>th</sup> DAY OF December, 2018.**

.....

**ALI-ARONI**

**JUDGE**