



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO 413 OF 2014
IN THE MATTER OF THE ESTATE OF A M M (DECEASED)

L K MPETITIONER

VERSUS

G K M.....1ST OBJECTOR

J M M.....2ND OBJECTOR

Z K M.....3RD OBJECTOR

M M M.....4TH OBJECTOR

RULING

Provision for minors

[1] I have before me an application dated 14th December 2016 which seeks inter alia:

- 1. For an order of release of Kshs. 400,672 from the Public Trustee for purposes of payment of school fees and related expenses for V K and D M- minors.**
- 2. Any other order that the court will deem just and equitable in the best interest of the minors herein**

[2] The application is based on two affidavits of the Petitioner sworn on 14th December 2016 and 16th December 2016. It is also premised upon other grounds set out in the application. The major grounds for applying are;

- (a) That the two minors, namely V K and D M are biological sons of the deceased and currently undertaking education at [Particulars Withheld] Primary and Nursery School and [Particulars Withheld] Highway School; and have fees balances and other incidentals of Kshs. 93,176 and Kshs. 207,496, respectively; they will also need further Kshs.100,000 for miscellaneous expenses;
- (b) That the two minors were dependent upon the deceased during his lifetime;
- (c) That the Petitioner who is their mother and the widow of the deceased is not able to pay their school fees and the other expenses;

(d) Thus, as these minors have a right to education, they should be educated through funds from the estate; and

(e) That the other children of the deceased are adults and were educated by the deceased.

[3] The application was opposed through the affidavit of the 4th Objector. She averred that the Petitioner is receiving rent of about 65,000 per month from the estate rental property. She also deposed that the Petitioner also received more money from the public trustee through application dated 8th December 2015 for fees. But she has not accounted for these monies whatsoever. She continued to state that the intention of the Petitioner is to disinherit the 1st to 3rd Objectors who are daughters of the deceased. She made allegations that the said daughters have been threatened with death and a report to that effect was made to the police; and the Petitioner is one of the suspects being investigated for those threats. In the circumstances, she prayed that the court should refuse this application.

DETERMINATION

[4] I have perused the proceedings, considered the application and all rival averments made in this matter. The record reveals that this cause was filed by the Petitioner and one Edward Nyaga Manene. The 1st objector filed a Caveat on 29th October 2014 that nothing should be done in this cause without notice to her. Subsequently, on 16th July 2015, the objectors filed an objection to Making of Grant of Letters of Administration in this cause. The said objection is yet to be heard. Meanwhile, the Petitioner applied for release of Kshs. 212, 690 from the Public Trustee through application dated 8th December 2015 for purposes of paying fees for the two minors herein. The application was granted on 10th December 2015 in the best interest of the children. Now the Petitioner has applied for release of further funds for purposes of payment of fees for the two minors. Doubtless, the Petitioner is the widow of the deceased while the two minors and the 1st to 3rd Objectors are children of the deceased. The letter by the Chief dated 25th August 2014 clearly lists the Petitioner, the 1st to 3rd Objectors and the two minors as the dependants of the deceased. Therefore, the claim by the daughters that they are entitled to the estate of the deceased just as much as the two minors and the Petitioner is valid. I have also noted two things which the Petitioner has not denied. One, that she and her two children occupy the estate property. Two; that she collects rent from one of the estate property. It seems she was allowed to collect the rent by the family members in order to pay fees for her two children. As one of the Petitioners, she ought and failure to speak to the allegations that she receives rent from the rental houses is ominous. Again, I note that the petition states that the estate comprises in three properties, namely:

(a) NTIMA/IGOKI/[Particulars Withheld]

(b) NTIMA/IGOKI/[Particulars Withheld]

and

(c) M/V REG NO KAR [...]make TOYOTA L TOURING

There is no mention of the benefits and the amount thereof paid to the Public Trustee- something which portends some factual as well as legal dilemmas. First dilemma; the court must establish the nature and the amount of the benefits concerned- whether they are subject of statutory nomination or not is critical. That is not possible without the correct information. Second dilemma; this court should establish whether the Petitioner or any other person is collecting rental income from the estate property and the amount thereof. Again, there is no succinct information on this from the Petitioner. Third dilemma; the claims by the daughters of the deceased are valid and merited; they deserve protection and intense evaluation by the court. Those rights should not be determined in summary manner. On the other hand, I am acutely mindful of the fact that the child's best interest should always be of paramount importance in any proceeding concerning the child. In this case, the children's interest is in their right to education which should be realised through making of reasonable provision from the estate to that effect. Therefore, I am inclined to carrying out a novel balancing act of these rights. At the same time, I should ensure that this cause is

unlocked and concluded expeditiously in order to make provision to all persons concerned and to avert similar applications being made every too often. Accordingly, I make the following orders which are expedient and apt to meet the interest of justice;

1. The Public Trustee shall, within 7 days inform this court of the nature of benefits and the amount paid thereto in respect of the deceased person. In particular, the Public Trustee should inform the court whether these benefits were subject to statutory nomination and who the nominee is.

2. The Petitioner shall, within 7 days confirm to this court in writing whether she collects rent from the estate property, and if so, to file within the same period a full and accurate account of all the rent she has collected from the estate property.

3. The Petitioner shall provide the amount of school fee for first term 2017 to the court within 7 days after which I shall direct the Public Trustee to pay the fee directly to the school.

4. This cause shall be placed before me on the 25th day of January 2017 for further orders.

Dated, signed and delivered in open court at Meru this 18th day of January 2017

F. GIKONYO

JUDGE

In the presence of:

Kibiti advocate for respondent/objectors

Ndubi advocate for petitioner/respondent – absent

Petitioner – present

F. GIKONYO

JUDGE