

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 3079 OF 2002

IN THE MATTER OF THE ESTATE OF JOSEPH GICHUKI RIUNGE(DECEASED)

RULING

1. Am tasked with determining two applications, one dated 15th December 2016 and the other dated 9th January 2017.

2. The application dated 15th December 2016 is at the instance of Josephine Njeri Riunge. She asks for leave to withdraw money from one of the accounts of the estate to meet her medical expenses. Three of the administrators have responded to that application. They allege that she is not unwell, and that all she wants is to access her share of the estate's money prior to the grant being confirmed. They further argue that the documents she is using to prove her case are old and were used in previous proceedings. They further state that the application is only intended to delay the finalization of the matter.

3. The applicant is not an administrator, and in my view she has not demonstrated the circumstances under which the court would allow her to access estate money lying in the deceased's account without passing through the administrators. The said funds vest in the administrators by virtue of section 79 of the Law of Succession Act, Cap 160, Laws of Kenya. It is only the administrators who can disburse that money in the first instance. The applicant ought to place her claim to the administrators' first instance, and should come to court only after they fail to accede to her request. She has not demonstrated that she ever contacted the administrators over the same, for them to consider her case, before she decided to come to court. Even at coming to court she ought to have sought to have the administrators ordered to cater for her medical needs, if that is acceptable, or to be directed to release the funds to her for that purpose rather than asking that she be allowed to withdraw the money from the estate account, for she has no legal standing whatsoever to withdraw any money from estate accounts.

4. In any event, the applicant is not a minor. From what I have seen of all the survivors of the deceased herein, they are all grown up, all past fifty years old. It cannot be that any of them was dependent on the deceased at the point of his death, to warrant remaining dependent on his estate after death. I doubt that if the deceased were still alive he would meet the medical expenses of the applicant. Even if he were to do so, it would, not out of legal duty, but out of the weight of moral obligation, which, unfortunately, should not be the case here. The applicant should foot her own bills without looking up to the estate.

5. The application dated 9th January 2017 seeks several orders, among them injunctions, warnings and directions to the local police. It is brought at the instance of Theresa Wanjiro Riunge, one of the administrators. She names her co-administrators as respondents. The application relates to sale of fruits from one of the estate's farms. She argues that the other administrators are selling the fruits at a price which is way below the sale price. The respondents swore a joint affidavit on 10th February 2017 in response. They state that the fruits in question are harvested from old pear plants on the farm and after sale the proceeds are shared equally amongst the beneficiaries. They state that after the sale, the subject of the application before me, the sale proceeds were similarly shared. They assert that the buyer alleged by the applicant to have had offered a higher price never came forward so that they could engage with him.

6. It would appear that the fruits have already been sold. It would serve no purpose to make an order one way or the other. In any event, the material placed before me does not demonstrate any wrong doing on the part of the respondents. The only issue that would arise from their conduct should be limited to rendering of accounts with respect to the said sale.

7. I find no merit in the two applications, and I do hereby dismiss the same. To discourage such applications, whose effect would be to delay the finalization of the pending confirmation application, I shall condemn the applicants to pay the costs thereof to the respondents.

DATED, SIGNED and DELIVERED at NAIROBI this 7TH DAY OF MARCH, 2017.

W. MUSYOKA

JUDGE