



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 1239 OF 2008**

**IN THE MATTER OF THE ESTATE OF JAMES KANYOTU (DECEASED)**

**RULING**

1. On 3<sup>rd</sup> May 2017, counsel for Jane Kanyotu appeared before me with an application dated 2<sup>nd</sup> February 2017. I was urged that the application was urgent as it related to school fees. As the matter touched on education of children, I directed that the same be mentioned on 4<sup>th</sup> May 2017 before any of the Judges in the Family Division. On 4<sup>th</sup> May 2017, the matter was listed before Muchelule J for mention, who directed that the same be heard before me on 5<sup>th</sup> May 2017. It transpired that I was not sitting on the said date, and so the matter was not heard. The parties then present in court obtained a date at the registry for the hearing of the matter on 10<sup>th</sup> May 2017.

2. On 8<sup>th</sup> May 2017, the matter was again placed before me by counsel for Jane Kanyotu, and I was urged that 10<sup>th</sup> May 2017 was too far, and I was invited to consider bringing the date closer and to grant the application. As I could not grant the orders sought *ex parte*, I directed that the matter be heard on 9<sup>th</sup> May 2017 with notice to all the parties. Come 9<sup>th</sup> May 2017 all the parties were in court, and agreed for a hearing on 10<sup>th</sup> May 2017.

3. When the matter came up on 10<sup>th</sup> May 2017, counsel for Willy Kihara, Margaret Murigu and Mary Kanyotu raised a preliminary issue that Muigai J. was seized of the matter, had given several directions on the way forward and had granted 19<sup>th</sup> June 2017 as the date for the disposal thereof. It was his view that it would offend protocol for the matter to be seemingly yanked from Muigai J. and placed before me in the circumstances. He wondered why the applicant had not sought to persuade the Judge seized of the matter to grant them a concession to be heard during her leave days. He stated further that there could be no urgency in the matter for the family of the applicant had so far be given money in excess of Kshs. 300,000,000.00, part of which should cater for the educational needs of her children.

4. In response, counsel for the applicant protested at the suggestion that she was forum-shopping, stating that the file was only placed before me as Muigai J. was on leave. She stated that when the matter came up last, the parties engaged in very intense negotiations and she forgot thereafter to obtain directions on the disposal of the application dated 2<sup>nd</sup> February 2017. On the disbursement of Kshs, 300, 000, 000.00 or thereabout to the applicant, she countered that whether or not there were such disbursements the estate was still bound to meet the educational needs of the children of the deceased.

5. Counsel appearing for the other parties did not appear to be opposed to the said application being heard.

6. The application seeks release of various amounts of money to named individuals who are said to be children of the deceased studying at various universities and colleges in the United States of America. In her affidavit in support of the application, the applicant avers to her difficulty in raising the amounts of fees required. She avers that the educational needs of the children of the deceased ought to be met from the estate. She filed a further affidavit on 28<sup>th</sup> March 2017 to attach copies of the fees statements and related documents.

7. As mentioned hereabove, it is Muigai J. who is seized of this matter. The same even has a hearing date. It is in respect of that that counsel for Willy Kihara and others was concerned about what he perceived to be an attempt to have the matter taken away from Muigai J. so as to be heard by me, what is called forum-shopping. My colleague is on leave, and that being the case, any matter that Muigai J. is seized of can be handled by any other Judge should good cause for that be demonstrated, such as where there is urgency of some kind which cannot wait for Muigai J. to resume duty.

8. When counsel for Willy Kihara and others raised the matters that he did on 10<sup>th</sup> May 2017, I expected that counsel for the applicant would address me on the urgency of the matter at hand, for that is the only reason that would permit me to handle a matter that another Judge, who is on leave or unavailable for any other reason, is seized of. She did not seek to demonstrate urgency, instead she asserted that the applicant's children were entitled to support from the estate so far as school fees is concerned.

9. The necessity of demonstrating urgency arises from the fact that the application has been pending since 2<sup>nd</sup> March 2017 when it was filed, and 28<sup>th</sup> March 2017 when the further affidavit was filed. In the intervening period, the same has come up before Muigai J. several times. Surely, the applicant should have sought to state their case then. I would fully understand the fears of counsel for Willy Kihara when one looks at the matter with that in mind. I have taken time to peruse through the said application; there is nothing in it, beyond the fact that it concerns school fees, that persuades me that the same ought to be dealt with with urgency.

10. As the urgency of the matter has not been demonstrated, I do not see why the hearing of the application dated 2<sup>nd</sup> February 2017 cannot await the resumption of duty of the Judge seized of the cause. I will decline to hear it on those grounds. Directions on its disposal shall be sought before Muigai J. It is so directed.

**DATED, SIGNED and DELIVERED at NAIROBI this 12<sup>TH</sup> DAY OF MAY, 2017.**

**W. MUSYOKA**

**JUDGE**