



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 575 OF 2017**

**IN THE MATTER OF THE ESTATE OF ELIUD SIMON MBILU (DECEASED)**

**MARIE KASYOKA MBILU.....PETITIONER**

**VERSUS**

**EUNICE MBILU.....RESPONDENT**

**RULING**

1. The deceased Eliud Simon Mbilu died on 30<sup>th</sup> April 2017 at MP Shah Hospital Nairobi following admission on 10<sup>th</sup> November 2016. He was being treated for cancer. There was an outstanding medical bill of Kshs.10,306,336/= at the time of his death. It would appear that the bill was to be settled before the deceased's remains could be accessed for burial.

2. The petitioner Marie Kasyoka Mbilu is the daughter of the deceased. On 17<sup>th</sup> May 2017 she filed this petition for letters of administration *ad colligenda bona* to enable the court order that Kshs.10,306,336/= be withdrawn from the deceased's account No. [Particulars withheld] KCB, Kilindini Branch to settle the medical bill, and that Kshs.1,003,500/= be withdrawn to fund funeral expenses. On 31<sup>st</sup> May 2017 the petitioner was represented by Mr. Ondieki and the respondent Eunice Mbilu by Mr. Mburu. It was agreed that the money be released jointly to the petitioner and the respondent for the indicated purpose. The respondent is the widow of the deceased.

3. On 16<sup>th</sup> June 2017 the petitioner filed the present application to complain that the respondent had become uncooperative by failing to agree to open a joint account into which the above monies could be deposited and payments made therefrom. The respondent's response was that, following the consent above, the petitioner had come to her matrimonial home and taken away valuables, including motor vehicle KAU 220T which she was using. Further, that there was disagreement on how much friends and relatives had been contributing towards the funeral, and the fact that the petitioner had not accounted for the money. Lastly, the respondent wanted the joint account to be opened at KCB Kitui Branch.

4. The petitioner, in her application, asked that the order issued on 31<sup>st</sup> May 2017 be varied so that the hospital bill and the funeral expenses be directly paid by the Bank.

5. It is regrettable that the petitioner and the respondent, by this unnecessary disagreement, do not want the body of the deceased to be released from the hospital and accorded a decent burial.

6. I consider that it will be possible, once a petition for full grant is eventually filed, for any party to seek accounts.

7. In the meantime, I direct the Manager KCB Kilindini Branch to pay Kshs.10,306,336/= from the deceased's account No. [Particulars withheld] to MP Shah Hospital Nairobi to cover the medical bill for the deceased Eliud Simon Mbilu. Further, the bank shall, within 7 days from the date of this order, pay Ksh.1,003,500/= jointly to the petitioner and the respondent for the funeral expenses. If the respondent

fails to present herself within 7 days, the Bank is authorised to pay the money to the petitioner to arrange the funeral.

8. In the meantime, parties have upto **27<sup>th</sup> September 2017** (when the matter shall be mentioned) to agree on whom shall petition for the grant of letters of administration.

**DATED and DELIVERED at NAIROBI this 12<sup>TH</sup> day of JULY 2017.**

**A. O. MUCHELULE**

**JUDGE**