

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 951 OF 2014

IN THE MATTER OF THE ESTATE OF J K G (DECEASED)

RULING

1. The application for determination is dated 26th April 2016. It for an order directed at the Public Trustee for release of a sum of Kshs. 223, 640.00 from the estate of the deceased to the bank account of the applicant, C M M, to cater for school fess arrears for her children, named in the application.
2. The applicant's position is that she is a co-administrator of the estate of the deceased. She states that her children have school fees arrears. R D K is said to have completed her secondary school education at [Particulars withheld] Secondary School in 2015, where she left a fees balance of Kshs. 32, 870.00 and as a result she has been unable to collect her results slip. D V K is said to have a fees balance of Kshs. 33, 000.00 for 2015 from an unnamed school. An annexure to the affidavit marked CMMC identifies the school as [Particulars withheld] Primary School. S G K allegedly owes [Particulars withheld] Boys High School Kshs. 33, 518.00 for 2014 and Kshs. 51, 947.00 for 2015, and [Particulars withheld] Secondary School a sum of Kshs. 29, 805.00 for the year 2016. She puts the total due as school fees at Kshs. 223, 640.00. She also claims for Kshs. 100, 000.00 for pocket money and shopping for the children. She claims the children are out of school. She mentions that the Pensions Department holds a sum of Kshs. 1, 700, 000.00 in favour of the estate.
3. She has attached several documents to her affidavit. There is copy of a grant of letters of administration intestate made on 22nd March 2016, which appoints her, and the second respondent, as the administrators of the estate of the deceased. There is a fees structure from [Particulars withheld] Secondary School for the year 2015, an unsigned letter from [Particulars withheld] Primary School on alleged fees balances for Term 1 2015 in respect of D V K, there is a fees structure for the year 2015 from [Particulars withheld] Primary School, a fee structure from [Particulars withheld] Secondary School, a fees structure from [Particulars withheld] Boys High School for 2015 and a letter from the Pensions Department, dated 26th February 2015, allegedly forwarding a cheque of Kshs. 1, 707, 155.80 to the Public Trustee, Nyeri.
4. There is a bundle of affidavits of service on record, indicating service of both the application and hearing notices in respect thereto. There is however, nothing on record in terms of a response to the application by the respondents.
5. The application was argued orally on 21st June 2016. It was urged for the applicant by Mr. Otenyo, who largely relied on the affidavit sworn by the applicant in support of the application. Mr. Macharia, for the respondents, relied on the letter from the Chief, which is on record herein, to state that the applicant and her children were strangers to the family of the deceased.
6. There is a judgment on record herein which was delivered on 21st March 2016 by Ougo J. The court found that the applicant herein was a widow of the deceased and a beneficiary from his estate. The grant that had been obtained previously omitting the applicant and her children was revoked, and it was ordered that a fresh grant of letters of administration intestate do issue to the two widows of the deceased, the applicant herein and the first respondent herein. A grant in that behalf was issued to the two widows, dated 22nd March 2016. There is no proof that the orders made in the judgment were ever reversed, either on appeal or review.

7. Flowing from the above, the applicant is therefore a survivor of the deceased, and so are her children, and they are all entitled to a share in the estate of the deceased. The entitlement to a share would mean that the children are entitled to their schools fees being settled from available estate funds.
8. I have noted from the documents attached, that the applicant has relied on fees structures obtained from the various schools allegedly attended by her children. None of these documents state categorically the amounts outstanding as school fees for the children in question. I am unable to tell, from the documents, the full extent of the fees owed by each of the three children. There is even a letter on record which is not authenticated by a signature of the head of the institution where it allegedly emanated from. The applicant ought to have obtained letters from the heads of each of the institutions in question clearly tabulating the arrears alleged to be owed by each child. The fees structures placed before me are of no use in terms of assisting the court work out the amount that ought to be paid out as prayed.
9. The applicant would like the fees settled out of funds allegedly held by the Public Trustee. She has not attached any document as proof that the Public Trustee is holding any money to the account of the deceased. What she has attached is copy of a letter that was written to the Public Trustee by the Pensions Department allegedly forwarding a cheque to the Public Trustee. There is, however, no confirmation that the Public Trustee ever received the funds the subject of the cheque referred to and whether the Public Trust still holds the said funds.
10. I find myself unable to grant the orders sought in the application dated 26th April 2016 for the reasons that I have stated above. The application is accordingly dismissed. There shall be no order on costs.

DATED, SIGNED and DELIVERED at NAIROBI this 8TH DAY OF JULY, 2016.

W. MUSYOKA

JUDGE