



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

**CIVIL CASE NO 81 OF 2015 (O.S)**

**IN THE MATTER OF THE ESTATE OF M'IKIUGU M'MWIRICHIA ALIAS IKUGU  
MWIRICHIA (DECEASED)**

**JUSTIN THIORA KIUGU.....1ST APPLICANT**

**DAVID KUBANIA KIUGU.....2ND APPLICANT**

**JULIUS KATHURIMA KIUGU.....3RD APPLICANT**

**AYUB MWITI KIUGU.....4TH APPLICANT**

**EDWARD MAITETHIA KIUGU.....5TH APPLICANT**

**RULING**

[1] This application has been brought to Court pursuant to Order 51 Rules 1, 3, and 4 of the Civil Procedure Rules, 2010, Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act, Cap 21 Laws of Kenya and Articles 10, 25 (c), 40 and 159 of the Constitution of Kenya.

[2] The Application is dated 1st September, 2016 and seeks orders:-

***(1) THAT matter be certified urgent and heard ex-parte.***

***(2) THAT an order be and is hereby issued directing the Meru branch of Africa Banking Corporation (ABC BANK) to forthwith release to the 1st plaintiff /applicant, one JUSTUS THIORA KIUGU, all the funds deposited in the joint names of 1st Plaintiff/applicant, one JUSTUS THIORA KIUGU and LAWRENCE KIAUTHA ARITHI, and the 1st plaintiff/applicant, one JUSTUS THIORA KIUGU do share the same to the rightful beneficiaries depending upon the amount deposited on behalf of each beneficiary and then file a schedule of distribution in court.***

***(3) THAT costs to be in the cause.***

[3] The Application is buttressed by the Affidavit of JUSTUS THIORA KIUGU, the 1st Plaintiff/Applicant and has the following grounds:-

***(i) THAT the Meru Branch of ABC Bank requires both signatories to sign the cheques.***

***(ii) THAT efforts to have the cheques signed by Lawrence Kiautha Arithi have not succeeded.***

***(iii) THAT the Plaintiffs'/Applicants' children need school fees the most urgently.***

[4] The Affidavit of JUSTUS THIORA KIUGU says:-

*"I JUSTUS THIORA KIUGU, an adult female (sic) of sound mind, resident in Mwiteria Village within Meru County and of P.o Box 3277-60200, MERU, do hereby make oath and state:-*

***(1) THAT I am the 1st Plaintiff/Applicant herein, hence competent to swear this affidavit on my own behalf and that of my co-plaintiff/Co-applicants who have expressly authorized me so to do.***

***(2) THAT the Ruling delivered herein on 03.08.2016 ordered release of the funds deposited in the Meru Branch of ABC Bank in the joint name of myself and Lawrence Kiautha Arithi. The order directing the said release was served on 18th and 19 August, 2016, upon M/S Kiautha Arithi & Co. Advocate and M/S Mwirigi Kaburu & Co Advocate respectively, as per a copy marked "JTKI".***

***(3) THAT later, I went to request Mr. Arithi to sign the cheques but he asked me to deal with my Advocate. He then wrote a letter to my Advocates to the effect, as per a copy annexed as "JTK2".***

***(4) THAT then, my Advocate requested Mr. Arithi to sign the cheques to facilitate release of the subject funds vide a letter dated 26.08.2016, a copy of which is annexed hereto and marked "JTK3".***

***(5) THAT vide a letter dated 31.08.2016, the 1st Defendant's Advocates indicated that they would revert once they receive instructions. A copy of that letter is annexed hereto and marked "JTK4".***

***(6) THAT I believe there are no instructions to be taken, in order to comply with a Court Order.***

***(7) THAT all the Plaintiffs/Applicants have children who most urgently require school fees and other necessities, and have not reported back to their respective schools due to lack of fees.***

***(8) THAT we have pending hospital, mortuary and burial bills to pay in respect of the prolonged hospitalization, death and burial of the 4th Plaintiff's/applicant's wife, who succumbed to cancer.***

***(9) THAT we have no other sources of income except the subject rent which we solely depend on.***

***(10) THAT we honestly believe that we are being frustrated so that we give up in this matter, since the 2nd defendant is very wealthy, and has filed a notice of appeal, as per a copy annexed hereto as "JTK5".***

***(11) THAT I pray to be allowed to receive the said funds and share them out to the rightful beneficiaries.***

[5] Mr. Carpeters Mbaabu, on 01/09/2016, told the Court that the tenor and purport of this application was to implement a Court Order issued by the Court on 03/08/2016. He however told the Court that one of the joint signatories to the apposite account had refused to co-operate. This meant the the concerned Court Order remained unimplemented.

[6] Mr. Mbaabu informed the Court that the apposite Order had not been set aside by a higher Court even after it had been served upon the Defendant's respondents. He requested the Court to find the orders sought in this application meritorious.

[7] I have perused the application and the Supporting Affidavit. I note that Order 2 in my Ruling delivered on 03/08/2016 was in the following terms:-

***"(2) The funds deposited in the joint names of JUSTUS THIORA KIUGU and LAWRENCE***

***KIAUTHA ARITHI, ADVOCATE, in ABC BANK, MERU, be released and be shared out to the rightful beneficiaries depending upon the amount deposited on behalf of each beneficiary”.***

[8] I find that this application is intended to implement the intent and the Spirit of this Court's Order issued on 03/09/2016. I find it meritorious and grant the following orders:-

(1) ***Prayer 2 is granted.***

(2) ***Costs shall be in cause.***

(3) ***Mr. JUSTUS THIORA KIUGU to file and exchange with the Defendants, through their Advocate, a schedule of distribution of the apposite funds within 30 days of today.***

[9] It is so ordered.

**DELIVERED IN OPEN COURT AT MERU THIS 1<sup>ST</sup> DAY OF SEPTEMBER, 2016 IN THE PRESENCE OF:-**

CC: Lilian/Daniel

Calpeters Mbaabu for the Applicants

**P.M. NJOROGE**

**JUDGE**