



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 1428 OF 2006

IN THE MATTER OF THE ESTATE OF JESSE MWANGI GACHURURI (DECEASED)

RULING

1. The deceased died intestate on 16th of June 2000 in Nairobi. On 28th June 2006 Stephen Irungu, James Muchire Mwangi and Defola Nduta Mwangi petitioned for grant of letters of administration intestate and the same was granted on 23rd April 2007. The administrators subsequently applied for confirmation of the said grant and the same was granted on 25th July 2012.

2. Through an application dated the 29th January 2015 Mr. Muriithi on behalf of the deceased's estate sought the following orders;

That they be allowed to release the share of the sale proceeds in respect of **L.R. No. 36/11/158** and **L.R. 36/11/184** to V M N, Everlyn Njeri Nduta and Sylvester Irungu Nduta who are names as adult beneficiaries on behalf of Defola Nduta (deceased) to hold in trust for themselves and on behalf of the J K N.

3. The application based on the grounds that Defola Nduta (deceased) is the beneficiary of the estate of Jesse Mwangi Gachururi and is survived by her children namely; V M N, Everlyn Njeri Nduta, Sylvester Irungu Nduta and J K N and they are entitled to share in her estate as per the Certificate of confirmation of Grant dated 25th July 2012. That J K N is a minor and that L.R. Nos. 36/11/158 and 36/11/184 has been sold pursuant to the orders of this court and the deceased's share is being held by Kinyua Muriithi & Co. Advocates.

4. The beneficiaries in their replying affidavit confirmed that the sale proceeds had been released to all the beneficiaries save for the family of Defola Nduta (deceased) on the basis that one of the children is a minor aged 12 years and in class 5 at **[particulars withheld]** Academy (Primary School). That the adult children of Defola Nduta (deceased) V M N, Everlyn Njeri Nduta and Sylvester Irungu Nduta have agreed that in order to safeguard the interest of the minor that the sale proceeds of **L.R. No. 31/11/158** and **L.R. No. 36/11/184** held by the said law firm be deposited in a joint account held in the names of Stephen Irungu Mwangi, James Michire Mwangi, Everlyn Nduta and Sylvester Irungu Nduta and the same be utilized to buy a rent generating property to be registered in the names of the four beneficiaries.

5. Subsequently on 9th March 2015 Stephen Irungu Mwangi and James Michire Mwangi the administrators of the late Jesse Mwangi's estate sought orders that that the firm of Kinyua and Muriithi & Co. Advocates be allowed to release Kshs. 1,000,000/- to Stephen Irungu Mwangi and James Michire Mwangi to use in the distribution of the remaining assets among the beneficiaries. The application is grounded on the grounds that L.R. No. 36/11/184 had been sold pursuant to court order in P&A No. 1428

of 2006 (Estate of Jesse Mwangi Gachururi) and Stephen Irungu Mwangi and James Michire Mwangi have requested that Kshs. 1 million held by the said firm to be utilized in the distribution of the remaining family assets among the beneficiaries as some of the beneficiaries are opposing the said release of money to the administrators.

6. In a further affidavit dated 18th March 2015 **Everlyn Njeri Nduta** and **Sylvester Irungu Nduta** deponed that V M N is unwell and undergoing treatment at Mathari Hospital suffering from acute psychosis 2 Cannabis adding that it was only fair and just that the funds held with the firm of Muriithi & Co. be released in a joint account in the names of Stephen Irungu Mwangi, James Michire Mwangi and Everlyn Njeri Nduta and Sylvester Irungu Nduta. Further in an affidavit dated 20th April 2015 they deponed that **J K N** is a minor aged 12 years and is at *[particulars withheld]* Academy and that his fees is as follows;

Kshs. 18,280/- 1st term of study

Kshs. 15280/- 2nd term of study

Kshs. 13,780/- 3rd term of study

And an additional Kshs.4,500/-.That during the 3 school holidays April, August and December his expenditure is as follows; Food Kshs.10,000/-,Coaching Kshs. 5,000/- and Miscellaneous Kshs. 15,000/- (shopping and transport).That the same translates to Kshs. 143,340 /- per year.

7. It is not in dispute that the Defola Nduta was a beneficiary of the deceased and the said beneficiaries were in agreement on what each party was to get on selling the properties of the deceased. Unfortunately Defola Nduta died before receiving her share and the same is entitled to go to her children as per the confirmed certificate of grant dated 12th July 2012. Defola Nduta was survived by 4 children namely; Vincent Mwangi Nduta, Everlyn Njeri Nduta, Sylvester Irungu Nduta and Joseph Kariuki Nduta. According to the affidavit filed in this court it has been revealed that V M N is suffering from acute psychosis 2 Cannabis and is currently receiving treatment from Mathari Hospital as evidenced by the annexed medical report dated 12th March 2015 confirming the same. The other brother J K N is a minor as evidenced by his birth certificate that indicates that he was born on 16th March 2003 which makes him 12 years and 1 month approximately.

8. The applicants in this case have given a statement of the costing and needs of the said money to amount to Kshs. 143,340/-. According to the said firm the amount they are holding for Defola's children amounts to Kshs. 1,557,781/- whilst the sale proceeds from the sale of L.R. No. 36/11/184 amounts to Kshs.3,475,024/- which in total translates to Kshs.5,032,805/-. As it stands only Everlyn Njeri Nduta and Sylvester Irungu Nduta are capable to administer Defola's estate. They propose that the money be used to purchase a property that can generate income for them. They have however not identified any such property for this courts consideration.

9. J K N is a minor and wholly dependant to the estate of the deceased for his school fees and his upkeep. The same has been assessed at Kshs. 143, 340/-. V M N though an adult appears incapacitated due to his condition and is currently said to be receiving treatment at Mathari Hospital. As it stands am not sure if V is able to maintain himself or is dependant on his two siblings. Though investment is a good thing as it ensures continues generation of income for the subsistence of the estate and the same can continue maintaining the minor through completion of not only his primary education but also his secondary and university education too.

10. I therefore order that Everlyn Njeri Nduta and Sylvester Irungu Nduta shall open a joint account. The firm of Kinyua Muriithi & Co. Advocates to release the funds for J K's upkeep Kshs. 143,340/ to the two Everlyn and Sylvester to be deposited into the said joint account. They two shall thereafter file a petition for their late mother's estate if that has not been done. The monies being held by the firm of Kinyua Murithi shall form part of the estate of Defola, an order shall made on the sums being held are to

be distributed in the said petition.

11. The administrators of the estate of Jesse Mwangi Gachururi in their application seek orders that the said law firm of Kinyua Muriithi & Co. advocates to be allowed to release Kshs. 1 million to them to allow them complete distribution of the remaining assets of the deceased. The said firm claims that it is holding the share entitled to Defola's which devolves to her children.

12. From the averments is evident that all the other beneficiaries of the late Jesse Mwangi Gachururi have receive their share of the deceased's estate I find that as they are not entitled to any more as what is remaining in the custody of the advocates should go to Defola Nduta's children. As such I find their application filed on 9th March 2015 lacks merit and dismiss the same. Mention within 60 days to find out if the petition for Defola Nduta's estate has been filed and for further directions. It is so ordered.

Dated, signed and delivered this **8th** day of **May** 2015.

R. E. OUGO

JUDGE

In the presence of:-

.....**For the Applicant**

.....**For the Respondent**

.....**Court Clerk**