



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 753 OF 2008**

**IN THE MATTER OF THE ESTATE OF**

**M M L (DECEASED)**

**R M L.....PETITIONER**

**VERSUS**

**K M M.....RESPONDENT**

**RULING**

1. In the application dated 12<sup>th</sup> August 2015 the petitioner seeks to be allowed Kshs.174,200/= from the deceased's account No. [particulars withheld] Barclays Bank, Haile Selassie Branch, to be utilised to pay fees, pocket money, shopping and subsistence costs for I D M. She stated that I D M who is one of the children of the deceased M M L and who is a special child. It was indicated that he has just been admitted to [particulars withheld] Home School and Tuition Centre at Lavington where the money is needed.

2. The respondent is a son of the deceased and has opposed the application. He wants the dispute to be determined first before any disbursements are made. He wonders why it has become necessary to move I from [particulars withheld] which was a cheaper school and in which his special needs were catered for. The school he is being moved to is expensive, he says. Lastly, the respondent states that the petitioner gets income from the estate which she can use to pay the fees. There was no response to the replying affidavit. There was no response to the allegation in the replying affidavit that the petitioner has since the death of the deceased been solely controlling the estate.

3. The history of this case is that the deceased died on 1<sup>st</sup> September 2007. He left a widow (the petitioner) and 6 children who include the respondent and I. On 14<sup>th</sup> April 2008 the petitioner filed this petition on the basis that the deceased had left a written will on how his property would be shared. She asked for grant of probate as she had been appointed the executor of the will. The respondent filed an answer challenging the will. His case was that at the time when the deceased allegedly made the will he was of such state of mind, from physical illness, as not to know what he was doing. Secondly, that the said will had not made reasonable provision for all the beneficiaries. He cross-petitioned for grant. This dispute has, quite unfortunately, been adjourned severally without being heard.

4. I have considered this dispute and application. I have decided that the solution to this family matter is to have the petition and cross-petition heard and determined on priority basis. I allocate this case to Judge Muigai who shall mention it on 21<sup>st</sup> September 2015 to be able to give an urgent date for hearing. In the meantime, the application is dismissed. Each side shall bear own costs.

**DATED and DELIVERED this 11<sup>th</sup> day of September 2015.**

**A.O. MUCHELULE**

**JUDGE**