



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 207 OF 2015**

**IN THE MATTER OF THE ESTATE OF MARY SYOKWIA KYALILI**

**RULING**

1. By a Petition filed on 16<sup>th</sup> July 2015 (entitled Grant of Letters of administration *Ad Litem* but clearly seeking Grant of Letters of Administration for special purposes or Grant of Letter of Administration *ad colligenda bona*), the unrepresented petitioners Jane Nduku Kyalili and Samuel Kasolo Kyalili who are, respectively, daughter and son of the deceased who died on 8<sup>th</sup> October 2014 seek to access the deceased's two bank accounts held at Equity Bank, KNUT House branch, River Road Nairobi for the benefit of the deceased's '*dependants, beneficiaries, grandsons and granddaughter respectively of the late Mary Syokwia Kyalili deceased, namely:*
  - *Currently a form four student at Kilungu Boys High School, Makueni*
  - *G K currently a form four student at Kilome Secondary School, Makueni*
  - *Mary Mbithe Kyalili at Mt. Kenya Unniversity, Thika Campus.'*

The petition attached a Consent of the other beneficiaries of the Estate dated 14<sup>th</sup> July 2015.

2. By order of the court made on 5<sup>th</sup> October 2015, the petitioners filed a further affidavit to detail the purposes for which the monies were sought to be withdrawn from the deceased's account. The affidavit sets out itemised requirements for school and university fees and related expenditure for three grandchildren of the Deceased with a further request for a global sum of Ksh.350,000/- as '*general upkeep and clearance of outstanding loans/soft loans jointly and severally from various parties including shylocks....'*
3. As a general principle of the law of succession grants may only be made with notice under section 67 of the Law of Succession Act which provides as follows:

***"67. Notice of application for grant***

*(1) No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for such grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired."*

4. The petitioners have not moved the court for the full grant of representation for a period of one year since the death of the Deceased in October 2014. The Court appreciates that the payment of school fees and related expenses is an urgent matter which may necessitate the filing of an application as presently before the court in terms of Rule 36 (1) of the Probate and Administration Rules "*where, owing to special circumstances the urgency of the matter is great that it would not be possible for the court to make a full grant of representation to the person who would by law be*

- entitled thereto in sufficient time to meet the necessities of the case.”*
5. The court considers that the circumstances of this case call for - as part of the preservation of the deceased's estate - an order for the prompt payment of urgent needs of the deceased's dependants such as school fees, upkeep and related expenses. A Grant of Letter of Administration *ad colligenda bona* will therefore be issued to the petitioners for the purposes solely of making the withdrawal and payments of school fees and related expenditure as set out in paragraph 7 of the further affidavit of the petitioners as follows:
- i. **Kshs.92,000/=** (Ninety two Thousand shillings Only) in respect of/being tuition – fee for one Mary Mbithe Kyalili to account No. Equity Bank account No.[particulars withheld], Account name MOUNT KENYA UNIVERSITY – THIKA CAMPUS, currently and further Sixty Thousand (**60,000/=** ) for the forthcoming semester.
  - ii. **Kshs.50,000/=** (Kshs. fifty Thousand Only) being Hostel fee for the current semester and the forthcoming semester, to account No.1131999134 Kenya Commercial Bank Sarit Centre, Account Name; MARY MBITHE KYALILI, from ACCOUNT NO.[particulars withheld] Bank of Africa River road Branch duly held by MARY SYOKWIA (Deceased).
  - iii. **Kshs.41,527/=** (Forty One thousand, five Hundred and Twenty Seven shillings only) to account No.0102065721201 Standard Chartered Bank Account Name, KILUNGU DAY SECONDRY SCHOOL, fees for A K ADMISSION NO.[particulars withheld] CLASS 4T; from ACCOUNT NO.[particulars withheld] Bank of Africa River road Branch duly held by MARY SYOKWIA (Deceased).
  - iv. **Kshs.23,877/-** (Twenty Three Thousand Eight Hundred and Seventy Seven Shillings only) to account No.0600296998796 Equity Bank Machakos Branch Account Name, Kilome S.A Secondary School, Fees for G K; from ACCOUNT NO.[particulars withheld] Bank of Africa river Road Branch held by MARY SYOKWIA (Deceased). *Attached herewith and marked “JNKi”* is a bundle of fees structures respectively.
6. The petitioners are also authorised to withdraw the sum of **Ksh.50000/-** only for general upkeep of the children until a full grant is obtained.

### **Orders**

7. Accordingly, a Grant of Letters of Administration *Ad Colligenda Bona* is issued to the petitioners for purposes of making withdrawal and payment of schools fees and related expenses set out in paragraphs 5 and 6 above. For avoidance of doubt, this Grant of Letter of Administration authorises the withdrawal from the deceased's accounts of a total sum of **Ksh.317,404/- (Three Hundred and Seventeen Thousand Four hundred and Four)** and no further or other sums of money may be withdrawn from the deceased's accounts at Equity Bank Limited and or elsewhere without the authority of a full grant of representation or until further orders of the Court.

**Dated and delivered the 13<sup>th</sup> day of October 2015.**

**EDWARD M. MURIITHI**

**JUDGE**

**In the presence of: -**

**Present in person for the Petitioners**

**N/A for the Respondent**

**Ms. Doreen - Court Assistant.**