



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 224 OF 2012**

**IN THE MATTER OF THE ESTATE OF E K S (DECEASED)**

**BETWEEN**

**E J ..... OBJECTOR/RESPONDENT**

**VERSUS**

**KJ B ..... 1ST PETITIONER/APPLICANT**

**A K K ..... 2ND PETITIONER/APPLICANT**

**RULING**

The application for determination is Summons dated 18th July, 2013 brought under S. 97 and 49 of the Law of Succession Act, Sections 3A and 63 (c) of the Civil Procedure Act, Order 40 rule 3 of the Civil Procedure Rules and all other enabling provisions of the law. The Petitioners pray that an order be issued directing the Public Trustee or District Commissioner of Nandi North to forward to the Applicants monies for school fees to the beneficiaries, namely; AK K, KL K, CGK to the tune of Ksh. 159,550.00 being the school fees required for the beneficiaries/dependants direct into the respective school accounts and also that the court sets aside orders issued on 13th March, 2013.

The application is based on grounds that the children were at a risk of losing their educational needs at school for lack of school fees and yet the Petitioner had no other way of meeting the children's educational needs such that they may not wait until the full grant was confirmed.

The application is supported by the affidavit of the 1st Petitioner, K J B sworn on 18th July, 2013. In addition to the grounds raised in support of the applicant, it is deposed that A K K (son of the deceased is studying at the University of [particulars withheld] and needed Ksh. 125,700/=, LK at [particulars withheld] University needed Ksh. 33,850/= and G C needed Ksh. 39,250/=.

She filed a Further Affidavit sworn on 8th May, 2014 in which she stated that G who is studying at [particulars withheld] School had an outstanding school fees balance of Ksh. 56,420/= and needed a total sum of Ksh. 90,250/= for the academic year.

The Objector E J filed a Replying Affidavit sworn on 4th May, 2014. Her case is that it was untrue that the 1st Petitioner KJB was a wife of the deceased and that the only children belonging to the deceased were those born by her (1st Petitioner). She stated that her children too required school fees as well as they were also sired by the deceased. She said she had no means of maintaining their needs. She said she was married to the deceased under Nandi Customary Law and both had two children namely, AKS aged fifteen (15) years and TKS aged 6 years. She stated that the school fees for the first child who is at

[particulars withheld] Secondary School had accumulated to Ksh. 45,650/=.

The Objector further deponed that the 1st Petitioner's children are all adults who can fend for themselves but her own children are minors who required support. She stated that the Petitioners fraudulently obtained Grant of Letters of Administration by forging a letter from the Chief. She added that her children should be granted equal rights to access funds.

She also stated that the application is aimed at misusing the deceased's estate and is an abuse of the court process.

The application was canvassed before me on 15th May, 2014 by way of oral submissions. Learned counsel Mr. Onkoba acted for the Applicant while Ms. Odhiambo acted for the Respondent.

In summary, Mr. Onkoba submitted that it was not true that the 1st Petitioner's issues could fend for themselves merely because they were above 18 years. He submitted that they were students who required the support of parents in both school fees and maintenance.

He also denied that the Objector was being disturbed by the Petitioners. He stated that there was no evidence that the deceased was paying the school fees of the children of the Objector and that they were sired by the deceased.

Miss Odhiambo on the other hand submitted that the application was aimed at wasting the deceased's estate and was made in bad faith. She submitted that there was no dispute that the Objector's children were fathered by the deceased. She submitted that the 1st Petitioner is a school teacher who can afford to pay the school fees for her children. She stated that if the Petitioners are allowed to access any funds then the Objector too must be accorded an equal amount of money.

Tracing back the background to this Petition, the deceased EKS died on 20th April, 2012 at the Moi Teaching & Referral Hospital. On 8th November, 2012 Grant of Letters of Administration was issued to KJ B and a K K as wife and son of the deceased. The deceased dependants were listed as the two Petitioners together with LK K (21 years) and GJ (14 years).

It later emerged that EJ who alleged was the 2nd wife of the deceased had been left out of the proceedings from the Petition for Grant of representation. She came into the proceedings as the Objector and she filed Summons for Revocation of the Grant on 11th March, 2013, seeking orders to restrain the Petitioners and their agents from accessing or withdrawing monies from the bank accounts and from intermeddling with the estate of the deceased. She also asked that the Grant of Letters of Administration issued on 8th November, 2012 and confirmed on 18th February, 2013 be revoked/annulled. She also asked that the Petitioners render a full account of the estate and that she be appointed as an administratrix of the deceased's estate.

Among the documents the Petitioners filed in court was a letter from the Chief dated 14th June, 2012 which stated that the deceased had only one wife (herself) and three (3) children namely, A K K aged 25 years, LKK (21 years) and GJK (14 years).

Annexure EJ 5 (b) to the Replying Affidavit is also letter from the Senior Chief, indicating that the Objector is the 2nd wife of the deceased and that prior to his death, the deceased had two wives namely K J. S (1st Petitioner) and the Objector.

The same Senior Chief wrote another letter dated 8th March, 2013 in which he stated that he did not author the letter dated 14th June, 2012 that was used by the Petitioners while filing the Petition for Grant of representation.

The discrepancies raised by the two authors, I think is an issue that shall be determined at the hearing of the Summons for Revocation of the Grant.

Be that as it may, the letter dated 30th April, 2012 written by the Senior Chief has not been questioned by the Petitioners with respect to its authenticity. It is the letter indicating that the deceased was survived by two widows namely the 1st Petitioner and the Objector.

This fact is further vindicated by the fact that the birth certificates of the children of the Objector attached to the Replying Affidavit do clearly show that the children were sired by the deceased. The registration of the said birth certificates was done before the deceased died. As such, I have no reason to suspect that they are not genuine.

Having said that, what is at stake is the interest of the children. Children are considered as dependants not because of their age but because they are dependant on someone. Therefore, although some of the children of the 1st Petitioner are above the age of 18 years, they still depend on their mother for school fees and other basic needs. Any request made by the 1st Petitioner for their school fees cannot be considered as frivolous in the circumstances.

In the same breath, having found that the children of Objector were sired by the deceased, it follows that they too are entitled to an equal requirement – that is of payment of the school fees.

However, any school fees must be subject of production of a school fees structure from the respective schools and colleges the children are in. This court will not therefore accept a mere letter indicating the school fees arrears. Again, it does not follow that the amount of money released to one family must be released to the other family. The school fees of each dependant shall be considered at an individual level as each dependant is an individual entity with specific requirements.

The school fees for the children of the 1st Petitioner is supported by the following documents.

- (a) Annexure KJB.3 as fees structure for AK K from the University of [particulars withheld].
- (b) Annexure KJB.3 (b) being school fees invoice for Ksh. 125,700/= in respect of A K K.
- (c) Annexure KJB.4 being school fees from [particulars withheld] University for Ksh. 33,850/= in respect of K L K.
- (d) Annexure KJB.5 (a) being fees balance structure for Ksh. 39,250/= in respect of C G K.
- (e) Annexure KJB.2 to the Further Affidavit being fees balance for Ksh. 56,420/= in respect G K C.

As for the children of the Objector, save for a general fees structure in the school where her children are studying, none specific to the respective children was exhibited. The only document indicative of any school fees balance is a letter dated 8th May, 2013 from [particulars withheld] Secondary (Annexure EJ.4) showing that A K has a fees balance of Ksh. 45,650/=. This letter is too general and may not be used to authenticate its content. A proper school fees balance structure in print form ought to have been presented. In effect, as at now, no monies shall be released to the children of the Objector for school for the reason I have given.

The effect of my observations is that the orders given by the court on 12th March, 2013 and not 13th March, 2013 as indicated by the 1st Petitioner are reviewed to the extent that monies from the deceased's estate shall be released to cater for her children's school fees in accordance with the terms I shall spell out hereunder.

In the result, I allow the application as set out herebelow:

1. The Public Trustee and the District Commissioner be and hereby jointly directly to release money for school fees directly to the following schools as follows:-

(a) Ksh. 125,700/= to the University of [particulars withheld] in respect of A K K.

(b) Ksh. 33,850/= to [particulars withheld] University in respect of K L K.

(c) Ksh. 95,670/= to [particulars withheld] School – Eldoret in respect of G J K.

2. The orders of 12th March, 2013 are effectively reviewed in the terms limited to Orders 1 (a), (b) and (c) above.

3. Each party shall bear its own costs of the application.

**DATED and DELIVERED at ELDORET this 1st day of July, 2014.**

**G. W. NGENYE - MACHARIA**

**JUDGE**

**In the presence of:**

Ondieki holding brief for Onkoba for the Petitioners/Applicants

No appearance for Wafula for the Objector/Respondent