



NO. 434/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 482 OF 2011

IN THE MATTER OF THE ESTATE OF NIXON MUIA MBATE (DECEASED)

GEORGE NDIKU MBATEPETITIONER/RESPONDENT

VERSUS

PETER NZIOKA MUIAOBJECTOR/APPLICANT

RULING

1. **Nixon Muia Mbate** (deceased) died on the **6th day of January 2009**. **George Ndiku Mbate** (Petitioner) petitioned for letters of administration in his capacity as the brother of the deceased. In an affidavit in support of the Petition for letters of administration intestate he averred that he was the only beneficiary to the estate of the deceased. Consequently a grant of letters of administration intestate was issued to him as a personal representative of the estate of deceased on the **24th day of August, 2011**.
2. On the **26th April 2012**, the firm of **Nzei** and company advocates representing the deceased's children and orphans, their mother having died in 2002 filed summons for revocation of the grant issued. They also sought an order restraining the Public Trustee –Machakos from paying out **Kshs.2,003,830.50 cts** to the Petitioner or any other person.
3. On the **30th September 2013**, by consent of both parties the grant issued was revoked and a fresh one issued on the **14th February 2013** in the name of **Peter Nzioka Muia** and **George Ndiku Mbate**. **Peter Nzioka Muia** was mandated to file an application for confirmation of the grant stating his proposed mode of distribution of the sum of money forming the estate of the deceased within 30 days. **George Ndiku Mbate** was granted **15 days** thereof within which to file a protest if any.
4. Summons for confirmation of the grant were filed on the **29th November, 2013**. In an affidavit in support of the same, **Peter Nzioka Muia** stated that the deceased's estate comprises of some **Ksh.2,003,830.50cts** a sum of money that is being held by the Public Trustee (Machakos) having been paid by the deceased's employer as gratuity; the deceased is survived by three children;
 - i. Peter Nzioka Muia (Petitioner/Applicant)
 - ii. Martin Mwendwa Muia
 - iii. Diana Ndunge Muia.
5. The applicant proposed that the sum of money be distributed amongst himself and his siblings as follows:

- a. Peter Nzioka Muia – **Kshs.600,000/=**
- b. Martin Mwendwa Muia – **Kshs.603,830.50cts**
- c. Diana Ndunge Muia – **Kshs.800,000/=**

- 6. Further, he proposed that the sum payable to **Diana Ndunge** who is a minor be deposited in an interest earning institution to be operated by himself and the Deputy Registrar of the court.
- 7. His co-administrator of the estate of the deceased did not file any protest as agreed.
- 8. According to **Section 38** of the **Laws of Succession Act** where an intestate has left surviving children but no spouse, his estate devolves upon the surviving children and ought to be shared equally among them.
- 9. The proposed mode of distribution of the estate having not been opposed and being in accordance with the law, I order as follows:

- i. **Peter Nzioka Muia** shall be entitled to **Ksh.600,000/=**.
- ii. **Martin Mwendwa Muia** shall be entitled to **Kshs.603,830.50cts**.
- iii. **Diana Ndunge Muia** shall be entitled to **Ksh.800,000/=**.

- 10. It is a requirement of the law that property devolving upon a child shall be held in trust. **Diana Ndunge Muia** being a minor her entitlement shall be held in trust in her regard by **Peter Nzioka Muia** and the **Deputy Registrar, Machakos High Court**. The sum of money payable to her shall be deposited in an interest earning account at a financial institute to be identified by the Trustees.
- 11. Consequently, I confirm the grant of letters of administration issued herein on that basis.
- 12. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 10TH day of NOVEMBER, 2014.

L.N. MUTENDE

JUDGE