

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1618 OF 2011

**IN THE MATTER OF THE ESTATE OF THE LATE DAVID MWANGI KINYANJUI -
(DECEASED)**

EMMAH WANJIRU KIBARA.....1ST PETITIONER

JOHN KINYANJUI MWANGI.....2ND PETITIONER

AND

EMMAH WANJIRU KIBARA.....APPLICANT

RULING

1. The applicant is one of the petitioners and administrators of the estate of the deceased who died intestate on 17th November 2009. She is the deceased's widow and was left with two children. On 23rd August 2011 she filed this application seeking to be allowed to make a monthly withdrawal of Kshs.127,000/= from the deceased's Account Number [*Particulars withheld*] at Equity Bank Ltd KNUT House Branch and A/C No. [*Particulars withheld*] at Kenya Commercial Bank, Moi Avenue Branch for her upkeep and that of the children. This was to be pending the hearing and final determination of the confirmation of the grant. She filed the application for confirmation on 14th June 2012, a grant having been made to her and the other petitioner JOHN KINYANJUI MWANGI. JOHN KINYANJUI MWANGI was the father of the deceased. His wife is PHYLLIS NYAMBURA JOHN. The two have protested by saying that they were dependants of the deceased who ought to be provided for in the estate. The applicant did not include them in her request for confirmation.

2. On 2nd December 2011 the applicant was by consent allowed to withdraw Kshs.250,000/= from the deceased's account at Equity Bank for the purposes of her upkeep and that of the children. This is how the consent that was signed by counsel of the parties read:-

*“By consent the applicant herein EMMA WANJIRU KIBARA be allowed to withdraw a sum of Kshs.250,000/= from the deceased's account No. [*Particulars withheld*] Equity Bank for purposes of the deceased dependants' maintenance. The matter be mentioned on 28th November 2011 or any other suitable date for settlement on the issue of distribution.”*

3. The record shows that the parties began to negotiate a settlement on the distribution of the estate. The matter was mentioned severally, but no settlement is yet to be recorded. The applicant then began to take dates for the application dated 23rd August 2011.

4. It does appear clear to me that the consent above compromised the application dated 23rd August 2011. There was no indication in the consent that the order contained therein was an interim one pending any further hearing of the application. What was left on record was the application for confirmation and the determination of dependency on the part of the parents of the deceased. I ask the parties to move with expedition to take a date for that hearing. Otherwise the application dated 23rd August 2011 has been

dealt with. I make no order as to costs.

DATED and DELIVERED at NAIROBI this 6th day of November, 2014.

A.O. MUCHELULE

JUDGE