



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

**SUCCESSION CAUSE 1155 OF 2007**

**IN THE MATTER OF THE ESTATE OF ABDUL SULTAN GULHAMHUSSEIN KASSAM**  
**(DECEASED)**

**R U L I N G**

This application is brought by Summons dated 7<sup>th</sup> June, 2012 and taken out under **Section 26** of the **Law of Succession Act**. The Applicant thereby seeks the following orders-

1. (spent)
2. (a) That pending the hearing and final determination of this application inter partes, the trustee/executors of the Will of the late **ABEED ABDUL SULTAN GULHAMHUSSEIN KASSAM** and in particular **MR. MOHAMED KASSAM** be compelled by an order of this honourable court to pay to the Applicant **ABEED ABDUL SULTAN GULHAMHUSSEIN KASSAM** the sum of **Kshs. 144,000/=** being the amount required by the Applicant for his personal sustenance for the months of April and May, 2012.  
  
(b) That the executors of the deceased's Will be restrained evicting the Applicant from the house occupied by him on **LR. NO. 1/631 CHAKA ROAD**.
3. That the Applicant be allowed to receive allowances for his own upkeep from the rental proceeds from the properties known as **LR. No. 1/631/CHAKA ROAD** and **LR. No. 209/5017/24** which form the deceased's net estate throughout his life time.
4. That a trust be formed and the properties transferred to **GULSHAN KASSAM** upon confirmation of the probate of the written Will issued on 12<sup>th</sup> May 2008.
5. That the costs of this application be provided for.
6. That there be an order from the court restraining any party from howsoever dealing with the two properties namely **LR. No. 1/631 CHAKA ROAD** and **LR. No. 209/5017/24-LUSAKA CLOSE** in Industrial Area (formerly Dundee Close) until further orders of the court.

The application is supported by the annexed affidavit of the Applicant sworn on 6<sup>th</sup> June, 2012. The Respondents are yet to file their response(s) to the application.

Pending hearing and determination of the application, Mr. Khamati for the Applicant argued that the Applicant has had no income since April, 2012, and that he was destitute. He urged the court to make an order for some payment pending the hearing of the application as it was not proper to let a man live in the streets when his father has property.

Ms. Ochieng' for the Respondents submitted that the Applicant was not entitled to maintenance and this point would come out clearly when the application is heard in full. Consequently, she argued that the orders sought should not be granted until after the hearing of the Respondents on the application. She contended that the Applicant had filed several applications previously, seeking similar orders, and that one of them was still pending hearing.

In a brief reply, Mr. Khamati, stressed that the Applicant had no means of survival and posed the rhetorical question as to why a person should die of hunger when his father's estate has income. He submitted that the executors herein should not let the Applicant starve when there is money that can sustain him. He asked the court to order some periodical payments under **Section 27** of the **Law of Succession Act**.

Having considered the arguments of both counsel, and after a perusal of the pleadings, it is patently clear that the Applicant has been living on some income derived from the rent payable in respect of some properties forming part of the estate. *Prima facie*, and without delving into the merits of the application at this stage, the Applicant has to date literally been relying on the estate for his upkeep. It would be unfair to deny him support when he is destitute and without any means of livelihood. **Sections 26** and **27** of the **Law of Succession Act** deal with provision for dependants. They state that-

**“26. Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased's estate effected by his Will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the Will, gift, and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate.**

**27. In making provision for a dependant the court shall have complete discretion to order a specific share of the estate to be given to the dependant, or to make such other provision for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit.”**

Although the term “*dependant*” is not defined in the Act, it covers the Applicant herein since he has been dependent on the estate throughout. In my view, it would be in the best interests of justice to observe and maintain the prevailing *status quo* pending the hearing and determination of the application now pending before the court. Consequently, I am further satisfied that it is fair and proper that some provision be made under the above Sections for the upkeep of the Applicant pending the hearing and determination of this application. The best measure of the amount which is reasonable, I think, is the amount which he has hitherto been drawing from the estate.

I therefore order that the Applicant be paid a monthly allowance of Kshs. 72,000/= per month with effect from April, 2012 until the hearing and determination of this application.

Orders accordingly.

**DATED** and **DELIVERED** at **NAIROBI** this 11<sup>th</sup> day of July, 2012.

**L. NJAGI**  
**JUDGE**