



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 973 OF 2019
IN THE MATTER THE ESTATE OF LINDA BERNADETTE
LOMONACO (DECEASED)

ROBERTO RAFFALE LOMONACO

APPLICANT

VERSUS

BILL ARNOLD BLACKBEARD 1ST

RESPONDENT/PETITIONER

GENEVIVE MARY CARPENTER 3RD

RESPONDENT/PETITIONER

RULING

1. This ruling relates to the application dated **4th February, 2026** filed by the Applicant, Roberto Raffale Lomonaco; seeking for **ORDERS THAT:**
 - i. **This Application be certified urgent by this Honourable Court and the same be heard on priority basis.**

ii. The Trustees/Executors of the Will of Linda Bernadette Lomonaco, be ordered to provide such provisions for the said minors/Defendants to cover their maintenance, education fees, medical fees and other benefits out of the income/rents of the properties bequeathed to each of them respectively by the Deceased under her Will dated 15th day of November, 2017.

iii. Pending the hearing and determination of this application the Trustees/Executors of the Will of the Deceased herein be ordered to provide the school fees for the minors in the sum of Kshs.248,550/= plus Kshs.80,000/= for the school uniforms as requested from them on 7th day of January 2026, to avoid the minors being locked out of school for failure to meet the School's Admission conditions.

iv. In particular this Honourable Court to order the Trustees to release the following arrears of funds wrongfully withheld for the well-being of the children as follows:-

School fees
1,736,880/=	
Uniforms
150,000/=	

Medical
60,000/=
Water and home station
90,700/=
Borehole
90,000/=
Urgent house repairs
200,000/=
Maintenance up to May 2024
2,500,000/= (@ Kshs.125,000/= p.m.)
Maintenance from May 2024 to date
p.m..1,650,000/= (@ Kshs.150,000/= p.m.)
Making a total of = Kshs. 6,397,550/=

- v. **An order be made directing the Trustees to pay a monthly maintenance allowance in the sum of Kshs.150,000/= on/or before the 5th day of each month, commencing February, 2026.**
- vi. **An order be made directing the Trustees to be paying all medical expenses of minors including hospitalization, special consultations, dental care, optical care and pharmaceutical costs and in order to achieve this purpose to provide a comprehensive medical insurance for the minors with a reliable insurance provider.**
- vii. **This Honourable Court to make such other Orders it may think fit for the smooth**

achievement of the objects of the trusts herein referred to.

viii. The costs of this Application be provided for.

ix. The Applicant and also the Legatee of the Will of the Deceased is also the father and guardian of the minors herein, namely AARON RAFFAELE LO MONACO and MIA BERNARDETTE LO MONACO.

2. The application is based on the grounds thereof and supported by affidavit and supplementary affidavit sworn by Roberto Raffale Lomonaco on **3rd February, 2026** and **31st March, 2026**.
3. He avers *inter alia* that he is the deceased's son and father of the minor beneficiaries. The deceased's Will bequeath substantial income-generating properties and monetary benefits to the minors, intended to cater for their maintenance, education and general welfare. He asserts that although the minors' properties generate rental income, the Trustees have persistently failed to apply such income for their benefit. Instead, they have either withheld funds or exercised their discretion in a manner that defeats the express intention of the testator and the welfare of the beneficiaries.
4. He maintains that despite repeated requests, the Trustees have declined to release adequate funds, forcing him to personally meet the minors' expenses and leading to significant financial strain. He further contends that the

Trustees' conduct amounts to a breach of fiduciary duty. He particularizes that the Trustees ceased providing maintenance on the basis that he had received part of his own legacy, thereby improperly shifting responsibility to him contrary to the will and the law.

5. That the Trustees have failed to invest rental income prudently and in compliance with statutory requirements, resulting in loss of potential income.
6. Additionally, the delay and selective investment of funds, particularly the belated placement of monies into bonds, are said to have undermined the minors' financial interests and failed to align with their respective ages of majority. He argues that such decisions expose the minors to financial risk, including losses upon premature liquidation of investments.
7. In the supplementary affidavit, he reinforces that Trustees' discretion is not absolute and must be exercised reasonably and in the best interests of the beneficiaries. He invokes the Children's Act and constitutional principles on the best interests of the child, asserting that the Trustees' refusal to release funds for maintenance, education and medical needs is unlawful and contrary to both statutory and fiduciary obligations.
8. He disputes the Trustees' financial disclosures, highlighting inconsistencies between declared rental income and bank statements and maintains that the Trustees improperly prioritized accumulation and investment of funds over the

minors' immediate welfare. He also demonstrates that the minors were adversely affected, including being sent home from school due to non-payment of fees.

9. The application is opposed vide replying affidavits sworn by Genevive Mary Carpenter on **31st March, 2026**. She avers *inter alia* that the Applicant's request for maintenance is misconceived, as the deceased Will expressly vest the Trustees with absolute discretion regarding maintenance payments.
10. She averred that the Trustees initially catered for maintenance and school fees pending disbursement of the Applicant's bequest and that, between November 2019 and December 2022, a total of **Kshs. 3,149,050/=** was paid towards such expenses. She further contends that upon receipt of his bequest of **Kshs. 9,700,000/=** following confirmation of the grant, the Applicant assumed primary responsibility for the minors and the Trustees lawfully ceased maintenance payments in order to accumulate and invest estate income for the minors' long-term benefit.
11. She justifies the Trustees' decision by reference to statutory provisions under the Trustee Act, asserting that the power to apply income for maintenance is permissive rather than mandatory, and that the Trustees are entitled to prioritize investment over immediate expenditure where this serves the beneficiaries' best interests.

12. It is further contended that parental responsibility remains vested in the Applicant under **Article 53 (1) (e)** of the Constitution, and cannot be shifted to Trustees. On this basis, the application for monthly maintenance and arrears is characterized as an attempt to improperly impose parental obligations on the Trustees and to deplete estate resources contrary to the minors' long-term welfare.
13. The parties have not filed written submissions.

ANALYSIS AND DETERMINATION

14. I have read the application before this court, the responses thereto and the rival submissions.
15. The application raises the question whether the Trustees' exercise of discretion under the Will and the Trustee Act was lawful, or whether it amounted to a breach of fiduciary duty by failing to cater for the minors' maintenance and welfare. While the will conferred wide discretion upon the Trustees, such discretion is not absolute and must be exercised in accordance with the law, reason and the overriding principle of the best interests of the child as established below.
16. In NKG v SGB [2024] KEHC 5658 (KLR) the court pronounced itself as follows: "**...22. Since the two issues are intertwined, I will deal with them together. I must be guided at all times by the mantra that the best interest of a child principle is paramount when dealing with children matters. 23. Article 53 (2)**

of the Constitution provides: “A child’s best interests are of paramount importance in every matter concerning the child.” 24. Section 8(1) of the Children’s Act 2022 provides; a. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies— a. the best interests of the child shall be the primary consideration; b. the best interests of the child shall include, but shall not be limited to the considerations set out in the First Schedule. 25. The First Schedule of the Children’s Act 2022 lists down the considerations to be taken into account when ascertaining what is in the best interest of a child: -

- 1. The age, maturity, stage of development, gender, background and any other relevant characteristic of the child.***
- 2. Distinct special needs (if any) arising from chronic ailment or disability.***
- 3. The relationship of the child with the child's parent(s) and/or guardian(s) and any other persons who may significantly affect the child's welfare.***
- 4. The preference of the child, if old enough to express a meaningful preference.***
- 5. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity.***
- 6. The stability of any proposed living arrangements for the child;***
- 7. The motivation of the parties involved***

and their capacities to give the child love, affection and guidance. 8. The child's adjustment to the child's present home, school and community. 9. The capacity of each parent or guardian to allow and encourage frequent and continuing contact between the child and the other parent and/or guardian(s), including physical access. 10. The capacity of each parent and/or guardian(s) to cooperate or to learn to cooperate in child care. 11. Methods for assisting parental and/or guardian cooperation and resolving disputes and each parent's/guardian's willingness to use those methods. 12. The effect on the child if one parent/guardian has sole authority over the child's upbringing. 13. The existence of domestic abuse between the parents/guardian(s), in the past or currently, and how that abuse affects the emotional stability and physical safety of the child. 14. The existence of any history of child abuse by a parent and/or guardian(s); or anyone else residing in the same dwelling as the child. 15. Where the child is under one year of age, whether the child is being breast-fed. 16. The existence of a parent's or guardian(s) conviction for a sex offense or a sexually violent offense under the Sexual Offences Act. 17. Where there is a person residing with a parent or guardian, whether that person— a. been convicted of a crime under this Act, the Sexual

Offences Act, the Penal Code, or any other legislation. b. has been adjudicated of a juvenile offence which, if the person had been an adult at the time of the offence, the person would have been convicted of a felony.18. Any other factor which may have a direct or indirect effect on the physical and psychological well-being of the child...

17. The Applicant has claimed through affidavit evidence and annexures, that the minors have suffered actual deprivation, including disruption of schooling due to non-payment of fees. In light of **Article 53 (2)** of the Constitution and **Section 8** of the Children's Act, this court is obligated to prioritize the minors' immediate welfare over competing financial considerations.
18. On the other hand, the Trustees have shown that they previously provided maintenance and thereafter opted to accumulate and invest estate income for the minors' long-term benefit. The audited accounts and investment records lend credence to their position that the estate's income is limited and that the investments made were lawful and prudent.
19. However, their assertion that parental responsibility rests solely with the Applicant is legally untenable to the extent that it seeks to diminish their fiduciary obligation to apply trust income for the benefit of the minor beneficiaries. Trustees are bound to balance both present and future interests of beneficiaries and cannot, under the guise of

discretion, disregard the immediate needs of minors, particularly where the trust property was expressly intended for their upkeep.

20. A critical analysis of the annexures reveals that although the Trustees acted within the legal framework in investing estate funds, their approach disproportionately favored capital accumulation at the expense of the minors' current welfare. The financial records confirm income generation and investment capacity, yet the school correspondence and related documents demonstrate tangible hardship suffered by the minors.
21. Further, while the financial statements do not conclusively establish misappropriation, the inconsistencies and lack of full reconciliation raise legitimate concerns regarding transparency and accountability. These factors collectively justify this court's intervention to ensure that the Trustees' discretion is exercised in a balanced and beneficiary-centric manner.
22. In the premises, I find that although the Trustees did not act unlawfully *per se*, they failed to exercise their discretion in a manner that sufficiently safeguards the best interests of the minors.
23. It will be of course unreasonable to hold the Trustees liable wholly for the support of the minors yet the Applicant who is their father is alive and well. There is no evidence that he is incapacitated and that he only relied on the estate for the upkeep of her children.

24. I also dare state that it is incumbent upon him to demonstrate that other than his father's estate, what else is he doing to mitigate the children's needs.
25. There must be a balance as stated above otherwise the estate could be depleted and the intention of the testator of supporting his grandchildren would be curtailed.
26. Taking the above observations, it will be remiss for the court to order the Trustees to pay some arrears which are unsupported. The middle ground in my view is to have an order where the Trustees will pay out at least some percentage of the amount accruing either from the rent collected or from the investments.
27. In such a situation I find that it is not very possible to be mathematically accurate as the minors needs will keep shifting as they grow and advance in their studies.
28. **In the premises I direct as hereunder:-**
 - (a) The Trustees shall at least utilize a minimum of 50% of all the monthly and or yearly accruals and or collections and profits or interests from the various investments option as they deem appropriate for the benefit of the two minors as per the Will and the same to begin immediately or within 30 days from the date herein.**
 - (b) The Trustees shall provide periodical accounts at least twice a year to the court and the**

parties indicating how they have continued managing the estate.

(c) Costs of the application shall be in the cause.

**Dated signed and delivered at Nairobi via video link
this 23rd day of April 2026.**

**H K CHEMITEI
JUDGE**