



REPUBLIC OF KENYA



**In re Estate of PMOO (Deceased) (Succession Cause E900 of 2024)
[2025] KEHC 7232 (KLR) (Family) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7232 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE E900 OF 2024

PM NYAUNDI, J

MAY 29, 2025

IN THE ESTATE OF PMOO

RULING

Introduction

1. Death is a disruptor and the parties herein have their story to tell; Until his death on 6th November 2022, the deceased herein, PMO was an employee of Precision Air Services PLC, with his earnings he was able to support both LO his son and LOO his father. In his lifetime there is no record of a contest as to who was entitled to his support and the measure of his or her entitlement.
2. Upon his death however all this has changed and now we find ourselves transported to the Valley of Elah to be front seat witnesses of the always epic battle between David and Goliath. Our modern-day David was born on 25th May 2016, at the time of his father's death he was just a few months shy of his 8th birthday. LOO is as Goliath in the unfolding drama, given the status of his health he is limping towards being an octogenarian, he is a widower and the father of the deceased.
3. The contest is over the yet to be disclosed anticipated payments by Precision Air Services PLC. Be that as it may an application of this nature ought to have been presented by way of summons for confirmation, in exercise of the courts discretion the matter has proceeded directly to submissions with the contesting parties filing affidavits with proposed mode of distribution.
4. L whose interests are safeguarded by the 1st administrator, has as the basis of his claim, the fact that he is the biological father. What is the measure of his need? He is retired, he is a widower. He has health challenges, he is on medication and while the deceased was alive he and another sibling named A jointly supported him and an orphaned grandchild. This responsibility now is solely on his son A. He offers that 30% of the amount that Precision Air will pay, should pass to him.
5. He has also sworn a replying affidavit on 14th May 2025, he challenges the averments of the 2nd Administrator in her affidavit of evidence.



6. He has particularised his needs for which the estate of the deceased ought to provide for to include,
 1. Monthly medication
 2. Caregiver/ Worker
 3. Food and Maintenance of the Home
 4. Clothing
 5. Entertainment
 6. Travel allowance
 7. Pocket Money
7. In his submissions he reiterates that he was reliant on the support from the deceased and cites the decision in *Ulda Aloo Ojodeh v Mary Awuor Ojodeh* [2015] eKLR.
8. In affidavit sworn on 27th February 2025, the 2nd administrator avers the minor is the only surviving biological child of the deceased. He was the sole breadwinner and the minor was wholly dependent on him. She has tabulated the child's monthly expenses alongside the sums required for his education. Already the minor has had to change schools. Her stand is the child is entitled to 100 per cent of the share of the estate of the deceased.
9. The 2nd Administrator submits that LOO has not proved dependency and relies on the decision in *Okello v Onyango* [2023] KEHC 22828 (KLR). Further it is contended that provision of the father is at the discretion of the Court, whereas for the minor it is an entitlement under law.
10. Factors that it is urged that must be considered are that the deceased is a retiree, likely with a pension, he already has a home he is residing in, he has other children and the support by the deceased as evidence by the Mpesa transactions was minimal.
11. The relationship between L, L and the deceased is not challenged. They are the father and son of the deceased respectively. The parties consented that the deceased was survived only by the two dependants, this is at paragraph 4 of the affidavit sworn on 4th May 2023 jointly by the 2 Administrators.
12. The issue then is what is the respective share of the 2 dependants. The parties have correctly stated the law that the Court is to be guided by Sections 26, 27 and 28 of the [law of succession Act](#).
13. I have read the decision in *Ulda Aloo Ojodeh v Mary Awuor Ojodeh* [2015] eKLR whose facts are almost similar to the current case. As in this case the deceased therein also died in a plane crash. He had one child and the battle pitted his mother (a parent) against his wife and son.
14. In arriving at the decision, the court considered that the objector (mother) in that case was advancing in years with deteriorating health and she would require medical attention and drugs for the rest of her life. The Court noted she had other children and she was benefitting from the estate of her late husband.
15. In the current case, the child is not an adult he is a minor aged 9 years he has the rest of his life ahead him. He has been dealt a blow, he has the rest of his life to live without the stabilising presence that his father may have offered him. Lucky for him, as only the dead can do, his father is reaching out with a helping hand in the form of an envelope from his former employer.
16. The Court is invited to go into that envelope and share what the deceased father has in his hands, between the minor and his grandfather. Section 8 of the [Children Act, 2022](#) provides that in all actions



concerning the children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies; the best interest of the child shall be the primary consideration

17. The First Schedule of the *Children Act*, then sets out the Best Interest Considerations. In summary the court is charged with arriving at a decision that weighs the welfare of the child for the foreseeable future. Under the law, it is the child who is entitled as of right to the estate of the deceased.
18. In the Ojodeh case cited above the Court distinguished between a dependant coming under Section 26 and an heir under the law. It clarified that a dependant does not have the same standing as a beneficiary under the law. For this reason, the reasonable provision under Section 26 does not necessarily mean fair distribution. The support cannot exceed the present and future needs of the dependant. I need to persuade myself that the situation of the father is dire enough to entitle him to a slice of the deceased's estate.
19. As stated earlier the employer has not disclosed the amount payable, I think for good reason. The option of a lump sum payment to the father of the deceased is therefore not an option in this case. In email communication of 15th September 2023, it emerges that the following sums were paid to the brother of the deceased AO (brother to the deceased, who has been supporting the father of the deceased) by the employer-
 1. TZS 1.5 Million Alliance Life Assurance [Funeral Cover]
 2. TZS 1M Strategies Insurance Limited [Funeral Cover]
 3. TZS 3,596,109 Precision Air Services PLC [Funeral Cover]
 3. TZS 2,949,000 Precision Air Voluntary Staff Contribution.
20. Death, as I said at the outset is disruptive. In this case, the justice of the situation demands that the father adjust his life style so as to tamper his needs to those that can be met by his surviving children.
21. I therefore direct that the Grant to the 2 Administrators is hereby confirmed.
22. The 2 administrators will open a joint account and receive the payment from the former employer of the deceased, Precision Air Services Limited.
23. The entire sum shall be held in trust for the minor to cater for his needs.
24. The matter will be mentioned on 10th June 2025 to confirm opening of the joint account and payment by the employer.
25. There shall be no order as to costs.

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 29th DAY OF MAY, 2025.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Nyaguthie for 2nd Administrator

Fardosa Court Assistant

