



**Taylor (Suing as Trustee of the Howard Henry Crooks Trust) v Absa Bank Kenya PLC
(Civil Case E164 of 2021) [2023] KEHC 18404 (KLR) (Civ) (29 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 18404 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE E164 OF 2021
AN ONGERI, J
MAY 29, 2023**

BETWEEN

NEIL TAYLOR (SUING AS TRUSTEE OF THE HOWARD HENRY CROOKS TRUST) PLAINTIFF

AND

ABSA BANK KENYA PLC DEFENDANT

JUDGMENT

1. The plaintiff in this case filed a plaint dated 24/6/2021 seeking the following orders;
 - i. That the Trust created by Howard Henry Crooks (deceased) be declared a valid Trust.
 - ii. That the defendant be ordered to honour the trust.
 - iii. That the defendant be ordered to pay general damages.
 - iv. That the defendant be ordered to pay costs of the suit.
2. The plaintiff's case in summary was that the deceased Howard Henry Crooks created a trust whereby he appointed the plaintiff as a trustee.
3. The plaintiff adopted his witness statement dated 24/6/2021 as his evidence in chief. In it he stated that on or around November 2020 Mr Howard Henry Crooks approached him to be the trustee of his estate trust which he then agreed. On November 25, 2020 they entered into a declaration of trust with Mr Howard Henry Crooks. The declaration of Trust was duly stamped and registered on January 7, 2021.



4. Mr Howard provided him with access to the Kenya Shilling Account on or around 2019 to assist him in administering payments to staff and to settle any other payments that arose such as Health expenses.
5. The plaintiff indicated that Mr Howard Crooks met his demise on March 13, 2021 after a battle with Pneumonia. The plaintiff continued to settle all his outstanding payments using the Kenya Shilling Account up until April 30, 2021 following which he transferred the remaining balance of the account to both beneficiaries equally as per Mr Howard Crooks request.
6. He approached the defendant vide a letter dated March 22, 2021 for access to the USD account in order to transfer the monies to the beneficiaries as per the declaration of trust which request was denied by the bank. The USD account continues to accrue bank charges to the detriment of the two beneficiaries.
7. The plaintiff is now seeking access to the dollar account to distribute the proceedings.
8. The defendants maintained that they cannot allow the plaintiff access to the said account since the plaintiff does not have letters of administration.
9. The sole issue for determination is whether the plaintiff should be granted access to the funds of the deceased held by the defendant.
10. The plaintiff said that the settlor appointed him trustee but there is no evidence that the funds were transferred to a trust account.
11. In the case of *Twalib Hatayan Twalib Hatayan & Anor vs Said Saggar Ahmed Al-Heidy & Others* [2015] eKLR, the Court examined and stated the law on trusts as follows:-

“ According to the Black’s Law Dictionary, 9th Edition; a trust is defined as

“The right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).”
12. The plaintiff was appointed as an executor trustee according to the letter he wrote to the bank after the demise of the settlor.
13. The settlor did not transfer the funds to a trust account and in the circumstances, according to the *Law of Succession Act*, the Plaintiff is required to obtain a grant of representation before he can access the accounts of the deceased.
14. The plaintiff can obtain a limited grant to enable him access the funds.
15. I dismiss the plaintiff’s case and direct that each party to bear its own costs of this suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 29TH DAY OF MAY, 2023.

.....
A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant

