



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

In re Estate of Samwel Amanka Ng'onze (Deceased) (Succession Cause E099 of 2021) [2022] KEHC 13493 (KLR) (23 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13493 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
SUCCESSION CAUSE E099 OF 2021
WM MUSYOKA, J
SEPTEMBER 23, 2022**

IN THE MATTER OF THE ESTATE OF SAMWEL AMANKA NG'ONZE (DECEASED)

RULING

1. The application for determination is dated September 27, 2021. It is at the instance of Joyce Opisa Amanaka. She would like Christine Nafula Amanaka and her Advocate, Mr Victor Shivega, compelled to avail a certified copy of his Bachelor of Laws (LL B) degree certificate, to prove that he is qualified to practice as such, and, in case his qualification as Advocate cannot be ascertained, then all the papers that he has filed in this cause be expunged from the record.
2. In her supporting affidavit, she avers that she questions the qualifications of Mr Shivega to practice as an Advocate. Her case is that she noticed in the facebook account of Mr Shivega that he had posted that he had attended Kakamega High School, but not the universities or law schools where he obtained his law qualification, which was, according to her, an indication that he had something to hide. She wrote to the Chief Registrar of the Judiciary and the Law Society of Kenya about it, both of whom stated that Mr Shivega was an Advocate, having been duly admitted as such in 2013. She visited the offices of the Council of Legal Education and the Kenya School of Law, to confirm whether he had undertaken pre-qualification studies and passed examinations. She further visited the Moi University library where she established that he had never borrowed a book from that library, neither did he have a thesis or paper written by him in that library. Her conclusion was that he never attended the Moi University School of Law. She invokes article 35 of the *Constitution*, and sections 11 and 112 of the *Evidence Act*, Cap 80, Laws of Kenya, to demand that Mr Shivega furnishes evidence that he held a university law degree.
3. I heard oral submissions from the applicant and Mr Shivega on March 10, 2022. The applicant told me that Mr Shivega should present his law degree to court so that it can be confirmed whether he was an Advocate. Mr Shivega submitted that the applicant was only intent on tarnishing his name. He stated that the applicant had gone to the offices of the Judiciary and the Law Society of Kenya, where she questioned his qualifications and she was informed that he was duly qualified to practice as an Advocate, and that that ought to have been adequate. He stated that the burden of proof lay with her to prove that he had no law degree, and was, therefore, not qualified to practice law.



4. This is a fairly straightforward matter. The applicant already has the answers to the questions that she asks. According to the *Advocates Act*, Cap 36, Laws of Kenya, a person becomes an Advocate of the High Court, and, therefore qualified to have audience before all the courts of law in Kenya, upon his being admitted to the roll of Advocates. That roll is kept and maintained by the Chief Registrar of the Judiciary. General oversight over Advocates is by the Law Society of Kenya, which is a statutory body, established and regulated by the *Law Society of Kenya Act*, Cap 18, Laws of Kenya, and to which Advocates become mandatory members upon admission as Advocates. Advocates are also subject to the oversight of the courts where they practice.
5. The qualifications for admission to the roll of Advocates include a law degree from a university recognized by the Council of Legal Education, undertaking studies at the Kenya School of law and passing pre-admission examinations administered by the Council of Legal Education. The Council of Legal Education is a statutory body responsible for legal education in Kenya, in terms of accrediting institutions that offer legal education in Kenya, recognition of law qualifications granted by foreign institutions, and running programmes for pre-qualifying candidates for admission to the roll. Any person who seeks admission to the roll of Advocates must be approved by the Council of Legal Education, must have undertaken studies at the Kenya School of Law and pupillage supervised by the Kenya School of law, and passed examinations by the Council of Legal Education, administered through the Kenya School of Law. Both the Council of Legal Education and the Kenya School of Law are institutions under the Office of the Attorney General.
6. From what I have stated above, it should be plainly clear that admission to the roll of Advocates in Kenya is an exercise that is firmly controlled by the State. The Judiciary, which admits Advocates to the roll of Advocates, is a state organ, and both the Chief Justice, who admits the Advocates, and the Chief Registrar of the Judiciary, who has custody of the roll, are state officers. The Law Society of Kenya, to which all Advocates in Kenya are mandatory members, is a statutory body, by dint of its establishment by an Act of Parliament. The Council of Legal Education and the Kenya School of Law are State entities, by dint of being statutory bodies within the Office of the Attorney General. The Attorney General is a creature of the *Constitution*, and it is an institution within the Executive, another State organ. All these are public bodies and institutions. They are the custodians of all the relevant information relating to Advocates in Kenya, and anyone who wishes to access information, relating to any person, practicing or purporting to practice as an Advocate in Kenya, is at liberty to approach any of these institutions.
7. By her own admission, the applicant has approached the Chief Registrar of the Judiciary, the Law Society of Kenya, the Council of Legal Education and the Kenya School of Law, and these institutions have provided her with relevant information concerning the status of Mr Shivega as an Advocate. I have seen the letter from the office of the Chief Registrar of the Judiciary, dated July 21, 2021, confirming the admission of Mr Shivega to the bar in 2013, and that from the Kenya School of Law, dated July 22, 2021, confirming that he held a law degree from Moi University. I believe that that ought to be adequate to address the issue raised by the applicant, and there would no need for the court to do more.
8. Once the statutory bodies certify a person as qualified to practice as an Advocate in Kenya, it would not be the responsibility of a court before whom that person practices to question his qualifications as such. It should be open to whoever doubts the qualifications of any such person to file a proper case before the appropriate court to have such person disqualified as such. Such disqualification cannot be sought and obtained in the middle of a live case, such as the instant one. In short, I am saying that the instant succession cause is not the proper forum for the applicant to challenge the qualifications of Mr Shivega. That challenge should be mounted elsewhere. The court has no reason to doubt the qualifications of Mr Shivega as an Advocate, once there is proof that he was admitted, by the Chief



Justice, to the roll of Advocates, and that his name remains in that roll. Getting information about the law school, that awarded him his LL B degree, is of little consequence, in the circumstances.

9. The application, dated January 11, 2022, also invites me to find that it was irregular for the matter to be placed before Farah Maalim J, as the file was actively before me. I am not aware of any Judge in Kenya going by the name of Farah Maalim. I suppose that the applicant is referring to Farah Amin J. It would appear that the applicant might have been provoked by something that happened before Farah Amin J. The applicant complains that she felt demeaned by remarks that she was not educated enough to question the qualifications of Mr Shivega and Mr Victor Osango, Advocate, and says that her rights were violated. She would like Farah Amin J to stop conducting the matter, and to have the matter transferred to another station.
10. It is true and correct that I have handled this cause in the past, inclusive of delivering a ruling thereon on April 10, 2019, distributing the estate. The party that Mr Shivega represents in these proceedings was aggrieved by those orders, and filed a summons, dated March 17, 2021, for review of the orders. Other applications were also filed, and orders were made, and visits to the property, the subject of the dispute, were also made. After I delivered the ruling on April 10, 2019, the matter was placed once before Njagi J, on another occasion before F Amin J, and on another before Hon Akee, Resident Magistrate, in her capacity as Deputy Registrar. From what I see, neither of the three handled the matter substantively. The Deputy Registrar conducted a site visit, on my instructions, and Njagi J and F Amin J, handled the matter on dates when I was not sitting. The record indicates that my colleagues did to make any substantive orders. Njagi J merely allocated a date for mention before me; while F Amin J directed that the matter could not proceed until the issues raised in Civil Appeal No 38 of 2021 were resolved. Clearly, therefore, there was nothing irregular with the matter being placed before the other judges. In any case, F Amin J had not taken the matter over from me. It is common practice that when the judge seized of a matter is not available to handle it on the due date, the same is mentioned before the judge available or before a Deputy Registrar. Ultimately, the application for review, dated March 17, 2021, which challenges my orders of April 10, 2019, should be heard by me, as required by the law, for the judge who made the orders should be the one to review them, unless he is unavailable, either due to transfer or on account of having left the judiciary or having died. There was nothing irregular with the matter being placed before F Amin J, and there would be no need for transfer of the matter to another High Court station on that ground.
11. With respect to what F Amin J said about the applicant's concerns about Mr Shivega and Mr Osango, the record is silent. There is nothing in the file on that, and the remarks must have been made, if at all, off the cuff or record. I suppose that the remarks must have been made in an effort to advise the parties not to personalize matters.
12. The disputes that are placed before courts are between the parties; the advocates, who act for them, are not themselves parties, for they only represent the parties, and the parties ought not to hold anything against such advocates, for whatever positions they might articulate on behalf of their clients. The parties ought not to direct their anger or fury towards the said advocates, for that would appear to be what is happening in this case. The bile directed at Mr Shivega appears to have been generated by the fact of his acting for the applicant's rival, and that against Mr Osango, merely because he commissioned an affidavit sworn by the said rival, that is her co-widow, Christine Nafula Amanaka. The applicant has spent too much time and energy needlessly fighting Mr Shivega, by writing letters to authorities and visiting places, in a mission designed, perhaps, to get Mr Shivega out of the matter. With respect, that is a mission that will take her nowhere. She should concentrate on prosecuting her case, instead of directing her fire on the Advocate for her co-widow. Mr Shivega is doing no more than advancing the case of his client. That is his duty in law, upon his being instructed, and he should not be begrudged



or personally denigrated for it. Each side or party should strive to present their case, without getting personal with the other party or side or its Advocate. If they are aggrieved by what has been deponed or said by the other side, the answer should lie with filing documents that correct the position, or to have the documents expunged from the record, and not in engaging in a personal vendetta against that other party or their Advocate for it.

13. Overall, there is no merit in the application dated September 29, 2021. It exists for the sole purpose of being dismissed, and I do hereby dismiss the same. Although costs ought to be ordered, given the frivolity of the matter, I shall refrain from making any order on costs, this being a family matter. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 23RD DAY OF SEPTEMBER 2022

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant

Joyce Opisa Amanaka, the applicant, in person.

Mr. Shivega, instructed by Victor Shivega & Company, Advocates for the respondent.

