

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 347 OF 2007

IN THE MATTER OF THE ESTATE OF AUGUSTINE MATO SHIRANDULA (DECEASED)

JACOB S. SHIRANDULA.....1ST PETITIONER/APPLICANT

MOSES S. SHIRANDULA2ND PETITIONER/APPLICANT

VERSUS

FLORENCE ACHITSA SHIRANDULA.....OBJECTOR/RESPONDENT

RULING

1. The 2nd Petitioner/Applicant has filed an application dated 26th April, 2019 seeking for orders that:-

(1) - (6) Spent

(7) Upon hearing and determination of this application the Respondent and the Applicant be and are hereby ordered to account for the rent collected and profits from business from the date of the death of the deceased to-date.

(8) Upon hearing and determination of this application there be and it is hereby ordered that all money withdrawn from the bank accounts after the death of the deceased by the Respondent be accounted for and refunded to the estate.

(9) Pending the hearing of the confirmation there be and it is hereby ordered that an audit of the assets, incomes and liabilities of the estate of the late Augustine Mato Shirandula be carried out by an accountant to be appointed by the Honourable Court to be filed in court and the cost thereof be borne by the estate.

2. The application is premised on the grounds on the face of the application and supported by the affidavit of the applicant. It is the contention of the applicant that the respondent Florence Achitsa Shirandula has been receiving benefits from the deceased's estate which she has been using to the exclusion of the applicant and his siblings. That it is therefore important to collect the entire estate and for the respondent to account for it before confirmation. Further that it is necessary for the court to appoint an auditor for purposes of auditing the deceased's estate before grant is confirmed.

3. The applicant states that the deceased was operating a bar and restaurant at Plot No. 1 Kakunga market. That the building has a bar, restaurant, shop, 11 lodging rooms and a butchery. That the butchery is rented out to a certain person who has been paying rent to the respondent. That the respondent should account for income from the said premises

4. That the deceased was running a newspaper distribution business using a motor vehicle KAJ 116 G. That the respondent continued to run the business after the death of the deceased and thereafter closed it. She sold the motor vehicles. That the deceased had deposited money with Standard Newspaper Company Limited as security before he was given the contract. That the respondent should account for the money from the business, the deposit and the sale of the motor vehicle

5. That the deceased had before his death leased out more than 500 sugarcane farms from various people. He asked the respondent to give a full account.

6. That the deceased had a retail shop at Ingolomosion market that is run by a certain person on behalf of the respondent. That the respondent should account for proceeds from the shop.

7. That the deceased left behind eucalyptus trees on 7 acres on land parcel No. Kabras/Shamberere/1664. That after the death of the deceased the respondent cut down the trees and sold them. That she should therefore give an account of the trees.

8. That the deceased left behind 3 motor vehicles that the respondent should give account of.

9. That the respondent has leased 10 acres of land parcel S/Kabras/Shamberere/1664 to a Chinese company known as Jizngxi Zhongmei Engineering Construction Company at Ksh. 40,000/= per acre per year for a period of 6 years which money she should account for.

10. That the respondent has sold land parcel S/Kabras/Shamberere/1821 to one Reuben Shikanga.

11. That the deceased left an outstanding loan of Ksh. 1 million with ICDC of which the respondent paid Ksh. 850,000/= leaving a balance of Ksh. 150,000/=.

12. That the deceased had bank accounts with Barclays Bank, Standard Bank and Stanbic Bank. That the respondent should account for withdrawals from the said accounts.

13.The respondent filed a replying affidavit in response to the averments by the applicant. She states that the bar and restaurant was run down by workers when the deceased was ailing. That she used her own money to re-open it from where she has been getting money for her own subsistence. That the lodgings are underutilized as the location is on the outskirts of town. That there are no commercial or residential houses for rent.

14.That she sold motor vehicle registration N. KAJ 116G to pay off ICDC loan. That motor vehicle Reg. No. KAA 505 Saloon was sold by the deceased while motor vehicle Reg. No. KLY 939 Mazda Saloon is lying at home.

15.That she is the one who planted the trees in issue and they are her property.

16.That the deceased left a loan of Ksh. 457,848.20 with Kenya Commercial Bank. That she negotiated with the bank to waive the loan. They agreed to waive the loan on condition of paying Ksh. 150,000/=. That she took an emergency loan with her employer and settled the amount.

17.That she has been servicing the ICDC loan from her small businesses but she was unable to do it and it has escalated to Ksh. 905,573.92.

18.That the deceased had left a loan of Ksh. 332,785.90 with West Kenya Sugar Company that she paid through supplying cane to the company.

19.That the deceased left a debt of Ksh. 76,355/= for alcohol supplied by Kahuhu Trading Company Limited that she cleared.

20.That she leased 5 acres for Ksh. 40,000/= per year to pay off some of the debts she had incurred in servicing the deceased's debts. The respondent opposed the granting of the orders sought.

21.I have considered the application and the response by the respondent. It is clear that the respondent has been managing the estate of the deceased to the exclusion of the applicant and the other beneficiaries. The duties of a personal representative as set out in Rule 83 of the Probate and Administration rules are, inter alia to:-

“(e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.

(h)to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.”

22 The application herein is for the respondent to give account and for an audit of the estate of the deceased to be carried out. Going by the averments by the applicant and the response by the respondent, it is evident that the prayers sought are merited. I thereby make the following orders:-

(1) That the respondent Florence Achitsa Shirandula to within three months of this order file with this court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings in respect to the estate of the deceased from the time of the deceased's death to date.

(2) That an audit of the assets, income and liabilities of the estate of the deceased be carried out by an auditor to be appointed by this court the cost whereof to be borne by the estate.

Delivered, dated and signed at Kakamega this 29th day of May, 2020.

J. N. NJAGI

JUDGE

In the presence of:

No appearance for the Petitioners/Applicants

No appearance for the Objector/Respondent

Petitioners/Applicants - Absent

Objector/Respondent - Absent

Court Assistant - Polycap

30 days right of appeal.