



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL CASE NO. 132 OF 2011

PAULINE ISUSI AMBANI.....1ST APPLICANT

LAURA MAKHULUNGU AMBANI.....2ND APPLICANT

BIANGA AMBANI.....3RD APPLICANT

VERSUS

EVELYNE SANI.....1ST RESPONDENT

BARCLAYS BANK OF KENYA LTD.....2ND RESPONDENT

J U D G M E N T

1). The originating summons by the applicants prays for the following prayers:

1. **Whether the applicants are entitled to the whole amount of money deposited in the Jambo Junior Account No. 6581033 at Barclays Bank Kisumu branch operated in their joint names.**
2. **Whether this court may declare that the 1st respondent with the connivance with the 2nd respondent fraudulently operated the account and squandered the money meant for the applicants without their knowledge and to their detriment.**
3. **Whether this court may declare that the applicants are absolute beneficiaries of the Jambo Junior Account No. 6581033 at Barclays Bank Kisumu branch.**
4. **That the court should compel the 1st and 2nd respondent's to account and reimburse the respondents all the money deposited by the applicant deceased father (Jamin Nelson Ambani) and all death benefits deposited in the said account but is currently unavailable.**

2). The supporting affidavit of Pauline Isusi Ambani sworn on 23-3-2011 shows that both of the applicants parents have passed on and that the 1st respondent was appointed as their guardian.

3). In her response vide a replying affidavit sworn on 10-12-2012 the 1st respondent does not deny that he was appointed the guardian to the applicants. She infact acknowledged receiving the sum of Kshs. 784,199/= from the deceased employer M/S Kenya Power and Lighting Company Limited where she gave deceased further Kshs. 300,000/= and retained Kshs. 483,199/=.

4). She further acknowledged opening an account with the 2nd respondent after the death of the applicants' father. She further attached several documents from various educational institutions in respect to the applicants and she demonstrated that she has been paying their fees and upkeep. The upshot of her response is that for over 12 years she has been taking good care of the applicants and she is surprised that they are turning around against her.

5). The 2nd respondent has filed a replying affidavit by one Waweru Mathenge dated 19-6-2012. They deny that they colluded with the 1st respondent and infact clarified that the account is not “Jambo Junior” but “Junior Eagle” and that the same was infact opened by the 1st respondent and not the deceased. The account was opened on 5-7-2007 way after the deceased had died on 20-5-1996.

6). I have carefully perused the pleading herein as well as the parties submissions. The only conclusion that this court can safely arrive is what is called in Kiswahili “Ahsante ya punda ni mateke”. The applicants in my opinion are totally ungrateful to their aunt. The 2nd respondent has explained as much. Secondly, the 1st respondent has clearly explained how she has taken care of the applicants through their education. Even if for a moment she had been given the entire Kshs. 784,199/= and not given Kshs. 300,000/= to the applicants grandfather (although there is no proof of such) it would be difficult to argue that the applicants since the demise of their father would be educated , fed and clothed by that amount of money. All of them apparently have gone through education till tertiary level. I do not believe that it is only their father's benefits from his employer that paid for their education and upkeep.

7). Equally, the 2nd respondent have been dragged into this suit unnecessarily. I do agree with its submissions that under the Banking Act they have less control on how the accounts are run by their customers. I do not think further that the applicants did their homework well to discover that it was the 1st respondent who opened the account and not their father.

8). I think I have said enough to suggest that this suit ought to be dismissed. The sour grapes exhibited by the applicants is totally unnecessary. I do not find any reason to suggest that the 1st respondent misused the funds given to her by the applicants deceased employer. Now that they are able to fend for themselves the applicants should learn to be grateful and not abuse the hand that fed them in their formative years. The suit is dismissed with nor orders as to costs.

Dated, signed and delivered at Kisumu this 17th day of November 2014.

**H.K.
JUDGE**

CHEMITEI