



REPUBLIC OF KENYA



**In re Estate of Sevu Mutyanthei (Deceased) (Succession Cause 3754 of 2004)
[2023] KEHC 19669 (KLR) (Family) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19669 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 3754 OF 2004
EKO OGOLA, J
JUNE 22, 2023**

IN THE MATTER OF

**JULIUS KAMUYA SEVU 1ST PETITIONER
ESTHER KATILE SEVU 2ND PETITIONER**

RULING

1. Before the court is a Summons Application dated September 5, 2022 where the applicant prays for the following orders:
 1. That this honorable court be pleased to issue an Order compelling the 1st petitioner/respondent to render a true, proper and comprehensive account of her administration of the Estate of the deceased including funds received by, spend and/or expended by herself running from the date of appointment to date
 2. That the honorable court be pleased to make an Order compelling the 1st petitioner/respondent to disclose to this honorable court all discoveries of the deceased's assets that were not included in the petition for grant of letters of administration and their current status
 3. That this honorable court, upon making a finding of any misrepresentation of the estate by the 1st petitioner/respondent, be pleased to make an order compelling the 1st petitioner/respondent to re-imburse the same to the estate of the deceased
 4. That the costs of this application be met by the 1st petitioner/respondent
2. The application is premised upon section 83 (3) & (h) of the *Law of Succession Act* and Rule 49 of the *Probate and Administration Rules*. It is supported by the Affidavit of Julius Kamuya Sevu sworn on October 5, 2022.



3. The applicant's case is that the 1st petitioner/respondent Petitioned the court for Grant of letters of Administration of the estate of the deceased on December 15, 2004 which was issued to her on 18th of April, 2005. The applicant objected to the grant and the same was revoked. As a result, a fresh grant was issued to the petitioner/respondent jointly with the Applicant on September 24, 2021.
4. The applicant faults the 1st petitioner/respondent for not disclosing all the assets of the deceased and the Petitioner has refused to disclose and share copies of the documents and certificates in relation to the assets of the estate with any of the beneficiaries despite persistent requests.
5. According to the applicant, there is a plot no. 84 which forms part of the estate of the deceased where the 1st petitioner/respondent has been collecting a rental income of Kshs. 100,000 and solely utilizing the rental income from September, 2002 to date without rendering any accounts.
6. The applicant states that the petitioner/respondent received way leave compensation of Kshs. 100,000/- in 2005 and 2009 from Kenya Power and Lightning Company in relation to Land Reference Number 2139, which has not been disclosed in the Petition and the 1st petitioner/respondent has not accounted for it.
7. The applicant states that it is in the interest of justice that the 1st petitioner/respondent be ordered to render statements of accounts for the estate of the deceased from the year 2007 to date including bank statements, receipt books, tenant agreements and money received from Kenya power and the sisal plantation along the power line.
8. The petitioner/respondent has not responded to this application. Both parties have not filed submissions.

Determination

9. Having considered the Application, the issue to be determined is whether the 1st petitioner/respondent should be compelled to render statements of account of the estate of the deceased.
10. The 1st petitioner/respondent was the estate administrator to the estate of the deceased from the year 2005 until his grant was revoked in 2021. section 83 (e) of the *Law of Succession Act* provides that one of the duties of a personal representative is to within six months from the date of the grant, 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; and section 83 (h) is to the effect that a personal representative shall 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.
11. *In Re Estate of David Kyuli Kaindi (Deceased)* [2016] eKLR Musyoka J in addressing the responsibility of an executor or representative to account stated that: -

“the personal representative must give account of the assets and liabilities that he has ascertained, and the assets that he has collected, gotten in, recovered or gathered and the titles he has perfected, and the steps taken to preserve the estate. He should also state the debts and liabilities that he has paid or settled before moving to court for confirmation of the grant, and if he has not yet settled the debts, state how he proposes to have them settled. The account at this stage should also state the assets that generate income, stating how much has been collected and how it has been utilized.”



12. The 1st petitioner/respondent has not rendered any statement of account on the estate of the deceased since she was appointed an Administrator in 2005. Being a statutory duty of a personal representative to render accounts, I make the following Orders:
- a. 1st petitioner/respondent is hereby ordered to render a true, proper and comprehensive account of her administration of the Estate of the deceased including funds received by, spent and/or expended by herself running from the date of appointment to date
 - b. The 1st petitioner/respondent is hereby ordered to disclose to this court all discoveries of the deceased's assets that were not included in the petition for grant of letters of administration and their current status
 - c. Parties to bear their own costs
 - d. Mention on October 9, 2023 to confirm compliance

Dated, Signed and Delivered at Nairobi this 22nd day of June 2023.

E.K. OGOLA

JUDGE

Ruling read and delivered in chambers online in the presence of:

.....for the 1st Petitioner/Respondent

M/S Ondijo for 2nd Petitioner/Applicant

Ms. Gisiele Court Assistant

