



REPUBLIC OF KENYA



KENYA LAW
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**Mlolwa v Osman t/a Osman & Associates (Civil Case 267A of 2018)
[2024] KEHC 14179 (KLR) (Civ) (8 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 14179 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 267A OF 2018

AN ONGERI, J

NOVEMBER 8, 2024

BETWEEN

YAHYA BABU MLOLWA PLAINTIFF

AND

SHABANA OSMAN T/A OSMAN & ASSOCIATES DEFENDANT

JUDGMENT

1. The applicant filed the Originating Summons dated 15/11/2018 seeking the following prayers;
 - i. That this honourable court be pleased to order the defendant to deliver documents and render an account for the expenses incurred in relation to land reference no. 1956/IV/36 including providing commission agreement, agreement on legal fees, cost of insurance, rates, rent collected and other costs, details on amount collected on behalf of the purchaser and cost of probate.
 - ii. That this honourable court does order that the defendant is not entitled to withhold the sum of ksh. five million one hundred and twenty thousand (Ksh.5,120,000) from the share of the proceeds of sale due to the plaintiff.
 - iii. That this honourable court does order that there exists no advocate-client relation between the plaintiff and the defendant hence no basis for charging legal fees and the plaintiff be paid the sums withheld by the defendant.
 - iv. That the defendant do bear the costs of this suit.
2. The Originating Summons is supported by the affidavit sworn by the applicant in which he deposed that he has an equal interest in land reference number 1956/iv/36 located in Voi sold by the defendant on instruction of Madhukanta Dhanji Shah & Khamal Dhanji Shah for Kshs. 20,000,000.



3. That the property was jointly owned by their parents hence they are equally entitled to the proceeds of the sale.
4. Further, that the applicant was informed by the defendant that the sale was complete and that he was entitled to Kshs. 10,000,000. However, the sum that was due to him was less deductions of expenses of Kshs. 5,120,000 and thus the sum due was Kshs. 4,880,000. The defendant retained more than half of what was due to the applicant.
5. The applicant averred that he had never instructed the defendant hence he should not bear any legal expenses. He also indicated that it is not unreasonable to ask the defendant to render a proper account and it is only fair that he be supplied with the documents in support of any expenses paid in the event that he may need them for future references.
6. The respondent filed an undated replying affidavit filed on 28/11/2018. In it she stated that she was indeed involved in the sale of LR. No. 1956/IV/36 located in Voi.
7. That they were authorized by the purchasers advocates to release the purchase price to their clients Madhukanta Dhanji Shah & Khamal Dhanji Shah and they acknowledged receipt of the same.
8. That the plaintiff herein is therefore a stranger to them as they have never offered him any service and thus no relationship exists between the two parties.
9. The hearing proceeded by viva voce evidence. The applicant testified as PW 1. He adopted affidavit stated above as evidence.
10. The applicant who testified as PW 1 said he did not give the defendant instructions to act for him.
11. The respondent also relied on her replying affidavit dated 18/5/2022 and a further affidavit dated 12/9/2023.
12. In cross examination, DW 1 said she had conduct of the sale of property ref. no. 1956/6/36 belonging to Danji & Madukhanta Dhanji Shah.
13. DW 1 called KAMAL KHANJ SHAH (DW 2) the son of Dhanji Shah as her witness.
14. He relied on his affidavit dated 12/9/2023. In it he stated that the property Land registration number 1956/IV/36 was originally registered in the name of his father Late Dhanji Panachand Shah and his uncle Late Ramnikal Panachand Shah and both their respective bequeaths were transferred to his mother Mandhakanata Dhanji Shah and Kamal Dhanji Shah as beneficiaries.
15. Together with his mother they instructed the defendant to represent them in the sale of the aforementioned property which was successfully registered in the name of the purchasers. The net proceeds were transferred to them and they issued a letter to the defendant confirming the same.
16. DW 2 said the applicant was a caretaker of his uncle's property.
17. The parties filed written submissions as follows;
18. The plaintiff submitted that he is the surviving child of Ramniklal Panachad Shah and the sole heir of his estate as opposed to DW2 the self-imposed executor and beneficiary.
19. That DW2 was well aware that the plaintiff was entitled to a share of the estate and since he did not involve him in the succession process, sought to have him benefit from the proceeds of sale of the estate by instructing his advocate to transfer the aforementioned amounts to him.



20. The plaintiff submitted that both the plaintiff and the defendant have testified that there has never been an advocate-client relationship between the parties and as such there is no basis for the defendant to impose legal fees upon the expenses to be deducted from the plaintiff's share of the proceeds from the sale of the suit property. To date the plaintiff is yet to receive his share of the proceeds of sale of the suit property.
21. The defendant alternatively submitted that both parties have confirmed that there was no existing advocate client relationship between the parties and the defendants. No advocate client relationship existed between the parties.
22. The defendant further argued that DW2 was the heir to the Estate of the Late Ramniklal Panachand Shah vide High Court of Mombasa Succession Cause Number 87 of 2015 and assets were registered vide entry number 42553/6 on 29/11/2016 in respect of the ½ share of the deceased to him and hence the mere claim without evidence that the Plaintiff is the surviving son of the Late Ramniklal Panachand Shah does not grant him right to demand from the Defendant to render any accounts and the Defendant has furnished the Assents which affirm the said status in evidence.
23. The defendant was in a fiduciary relationship with Madhukanta Dhanji Shah and Kamal Dhanji Shah and she not only had rendered accounts to her clients but also she had no instructions to render any account to any other person. The defendant further argued that the matter herein is not a succession matter and this court cannot determine the heirs entitled to the Estate of the deceased.
24. The defendant contended that they hold no funds whatsoever in account of the sale of LR No. 1956/IV/36 as the same was released to Madhukanta Dhanji Shaha and Kamal Dhanji Shah on 20/4/2018 and confirmed by DW2. The defendant further stated that she has never charged the plaintiff any fee nor has he ever received monies from the plaintiff.
25. The issues for determination in this originating summons are as follows;
 - i. Whether the advocate should be directed to render an account of the expenses in relation to sale of the land ref no. 1956/IV/36.
 - ii. Whether the advocate is entitled to withhold legal fees in the sum of ksh.5,120,000 in respect of legal fees in relation to the suit property.
 - iii. Whether there exists a client/advocate relationship between the applicant and the respondent.
26. On the issue as to whether the advocate is entitled to render accounts on the sale of the suit property, I find that there is no evidence that the applicant was entitled to the sale proceeds.
27. I find that the applicant is unknown to the beneficiary of the said property who testified as DW 2.
28. DW2 stated that the property Land registration number 1956/IV/36 was originally registered in the name of his father Late Dhanji Panachand Shah and his uncle Late Ramnikal Panachand Shah and both their respective bequeaths were transferred to his mother Mandhakanata Dhanji Shah and to himself, Kamal Dhanji Shah as beneficiaries.
29. Together with his mother they instructed the defendant to represent them in the sale of the aforementioned property which was successfully registered in the name of the purchasers. The net proceeds were transferred to them and they issued a letter to the defendant confirming the same.
30. The evidence of DW 2 was that the applicant was a caretaker of his uncle's property.



- 31. The applicant ought to have followed up the issue in the succession case to assert his claim since this court cannot determine the heirs entitled to the Estate of the deceased.
- 32. There is therefore no evidence that the applicant has an equal interest in land reference number 1956/iv/36 located in Voi sold by the defendant on instruction of Madhukanta Dhanji Shah & Khamal Dhanji Shah for Kshs. 20,000,000.
- 33. The applicant is accordingly not entitled to an order directed to defendant to render an account of the expenses in relation to sale of the land ref no. 1956/IV/36.
- 34. The Originating Summon has no merit and the same is dismissed with no orders as to costs.
- 35. Each party to bear its own costs of the suit.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2024.

A. N. ONGERI
JUDGE

In the presence of:

..... for the Plaintiff
..... for the Defendant

