



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**(Coram: Odunga, J)**

**SUCCESSION NO 3 OF 2018**

**IN THE MATTER OF THE ESTATE OF EDWARD ABONDO KISERO (DECEASED)**

**BETWEEN**

**JULIANA NDUNGE MUA.....APPLICANT**

**AND**

**JANE ANYANGO ADALA.....RESPONDENT**

**RULING**

1. By Summons dated 19<sup>th</sup> September, 2018, the Applicant herein, **Juliana Ndunge Muambi**, the first wife of the deceased herein, **Edward Abondo Kisero**, seeks the following orders:

1. **THAT** the application herein be certified urgent and fit to be heard ex-parte in the first instance.

2. **THAT** an interlocutory injunction order do issue to restrain JANE ANYANGO ADALA, the second widow of the Deceased, her agents and or servants howsoever from entering, alienating, managing or otherwise howsoever interfering with the operations and the management of:

i) Abondo Interiors Studios (Furniture Workshop business at Gikomba Market)

ii) Abondo Restaurant (Restaurant business at Lutheran Plaza)

iii) Janaby Essentials (Wines and Spirits Business)

iv) Abondo Restaurant Limited (Restaurant and Bar business at Railway Station)

v) Monies at Account No. \*\*\*\*\*, Bank of Africa, Kenyatta Avenue

vi) Monies at Account No. \*\*\*\*\*, Paramount Bank of Africa, Chester House, Koinange Street.

vii) A piece of land in West Karachuonyo Division, Rachuonyo North Sub-County.

and any other property of the estate of late Edward Abondo Kisero pending hearing and determination of this application.

3. **THAT** this Honourable Court do appoint Juliana Ndunge Muambi and Jane Anyango Adala, being the widows of the Deceased to jointly take charge of the operations and the management of:

i) Abondo Interiors Studios (Furniture Workshop business at Gikomba Market)

ii) Abondo Restaurant (Restaurant business at Lutheran Plaza)

iii) Janaby Essentials (Wines and Spirits Business)

iv) Abondo Restaurant Limited (Business at Railway Station)

v) Monies at Account No. \*\*\*\*\*, Bank of Africa, Kenyatta Avenue

vi) Monies at Account No. \*\*\*\*\*, Paramount Bank of Africa, Chester House, Koinange Street.

vii) A piece of land in West Karachuonyo Division, Rachuonyo North Sub-County.

and any other property of the estate of late Edward Abondo Kisero and to bank the proceeds thereof in a joint interest earning account pending hearing and determination of this application.

4. **THAT** this Honourable Court be pleased to issue a temporary injunction to restrain Jane Anyango Adala, her agents, servant, personal representatives or assigns, and any other person from interfering or intermeddling with the Estate of the Deceased in any way pending hearing and determination of this Succession Cause.

5. **THAT** this Honourable Court be pleased to issue an order compelling Jane Anyango Adala, her agents, servant, personal representatives or assigns, and any other person to render a just and true statement of account of the Estate of the Deceased from June, 2018 to date pending hearing and determination of this application.

6. **THAT** this Honourable Court do make any other appropriate orders it may deem proper to make herein.

7. **THAT** in any event, the costs of this application awarded to the applicant.

2. According to the Applicant, the deceased, **Edward Abongo Kisero** died on 11<sup>th</sup> July, 2018 intestate leaving behind two widows and 2 children namely:

i. **Juliana Ndunge Muambi - First Wife**

ii. **Jane Anyango Adala - Second Wife**

iii. **Natalie Atieno Kisero -Daughter (29 Years)**

iv. **Kelvin Kisero - Son (28 Years)**

3. It was deposed that the following are some of the known assets and liabilities of the Deceased as at the date of his death [including such assets as have arisen or become known since that date]:

i) **Abondo Interiors Studios (Furniture Workshop business at Gikomba Market)**

ii) **Abondo Restaurant (Restaurant business at Lutheran Plaza)**

iii) **Janaby Essentials (Wines and Spirits Business)**

iv) **Abondo Restaurant Limited (Business at Railway Station)**

v) **Monies at Account No. \*\*\*\*\*, Bank of Africa, Kenyatta Avenue**

vi) **Monies at Account No. \*\*\*\*\*, Paramount Bank of Africa, Chester House, Koinange Street.**

vii) **A piece of land in West Karachuonyo Division, Rachuonyo North Sub-County.**

4. According to the applicant, though the beneficiaries have not taken out Letters of Administration of the deceased, the second widow of the deceased, the Respondent herein, who has been in exclusive use, control and possession of all the properties of the deceased to the exclusion of the applicant and her children and continue to do so to their detriment, has, despite service of the consent form for Petition for Special Limited, declined and/ or refused and/ or neglected and/ or failed to append their signatures.

5. It was contended that the Respondent has breached her fiduciary duty to the estate of late **Edward Abondo Kisero** by:-

a) Solely occupying and using all the assets of the estate to the exclusion of the Applicant and her children;

b) Illegally occupying, managing and using all the assets of the estate without proper issuance of grant of Letters of Administration of the said estate;

- c) Refusing to allow the other beneficiaries to manage or oversee the operations of the deceased's estate since June, 2018 to date;
- d) Failing to avail the banking slips/statements with respect to the operations of the estate's assets;
- e) Failing to account to the beneficiaries all the collections and/ or proceeds received from all businesses and or generated by the assets of the estate from June, 2018 to date;
- f) Utilising daily receipts from the assets of the estate and their proceeds thereof for personal use;
- g) Failing to co-operate with and involve the Applicant and her children in the collection and preservation of the of the estate of late **Edward Abondo Kisero**.

6. The Applicant further contended that the Respondent has also perpetrated a fraud on the said estate by:-

- a) Claiming ownership and occupying of all of the assets of the estate of the Late **Edward Abondo Kisero** without issuance of Grant of Letters of Administration.
- b) Claiming ownership of all stock, tools of trade movable and immovable property of the estate to the exclusion of the Applicant and all beneficiaries of the estate;
- c) Illegally occupying and using all the assets of the estate without proper issuance of grant of Letters of Administration of the said estate;
- d) Failing to render a true and just account or any account at all of the proceeds and receipts of the assets of the estate from June, 2018 when the deceased was critically ill to date;
- e) Withholding banking of proceeds and collections of the estate since June, 2018 for own personal reasons;
- f) Banking of proceeds and collections of the estate since June, 2018 into her own bank account;

7. It was the applicant's case that the estate and the beneficiaries aforesaid have suffered and continues to suffer irreparable loss and damage unless the said widow is restrained by order of this Honourable court from siphoning the known and unknown properties of the Estate therefrom with impunity and in fragrant breach of her fiduciary duties thereto. The applicant lamented that the actions of the Respondent have made the Applicant and the other beneficiaries apprehensive that she will commit further acts that will constitute further intermeddling with the Estate of **Edward Abongo Kisero** thus frustrating the Succession Cause before this Court.

8. It was the applicant's view that the Applicant has established a prima facie case with a very high probability of success for grant of conservatory orders herein and that an award of damages would not be an adequate remedy since the said widow has refused, failed and or neglected to bank and truly account for daily proceeds and receipts of the estate and also to execute the Petition for letters of administration herein. It was the applicant's case that the balance of convenience herein is in favour of the Applicant hence it is in the interest of justice that grant of the Special Limited Grant for Administration of the deceased herein be issued to the said **Juliana Ndunge Muambi** and the conservatory orders prayed for as well as an order as to accounts do issue against **Jane Anyango Adala** herein.

9. The application was however opposed by the Respondent.

10. According to the Respondent, the business names, partnerships and companies therein mentioned as assets/liabilities of the deceased's do not qualify as either assets/liabilities within the contemplation of the Law of succession Act hence the orders herein sought cannot issue in respect of the said business names, partnerships and Company.

11. The Respondent however averred that she was not in a position to respond with respect of the Bank account numbers mentioned both in the summons as well as the supporting affidavit as there is no indication whose accounts they are and or the amount of money held in the said accounts. Similarly, she was unable to comment on the alleged land in Karachuonyo in view of the lack of any or any proper reference to/identification of the same hence her inability to ascertain which land the applicant has in mind.

12. The Respondent however asserted that she was not aware of any effort by the applicant to reach out to her and was surprised to be served with court papers herein of a petition for letters of administration in respect of the deceased's estate being undertaken without any prior consultations with her.

13. The Respondent averred that she was unaware of the deceased's properties, referred to in the supporting affidavit, over which she has retained exclusive control and possession. It was her view that the applicant would have been of better service to this Court by itemizing the deceased's property allegedly under her exclusive possession and control. It was therefore her case that the applicant has been poorly advised and set on a wild goose chase as she makes sensational allegations that are not backed by material factual details or any list of or identity of the assets and or property of the deceased that she holds.

14. It was the Respondent's response that the allegations of fraud are so generalized, wishful and scanty in facts/details and the same are at best a fishing expedition by the applicant. According to her, the allegations that the estate and the beneficiaries have suffered and continue to suffer irreparable loss and damage is just that; an allegation, the details of which are not known even to the applicant even though she deposes of the same otherwise the applicant would not have had any trouble demonstrating the same to the Court, rather than leave and or

expect the Honourable Court to speculate on facts in her favour.

15. It was therefore the Respondent's case that the applicant's purported apprehension is unwarranted and merely a scheme to hoodwink the Court into dispossessing her of her businesses that she struggled to build over the years, together with the deceased. Based on legal advice, the Respondent averred that the application before the Court is so hopelessly wanting, discloses no prima facie case and is therefore undeserving of the temporary injunction orders sought, the same may be as well be dismissed.

16. In her further affidavit, the applicant deposed that that the Bank Accounts are in the names of her late husband where the proceeds of the going concerns (businesses) are deposited on a daily basis and as at the time of filling the application herein, the bank balances could not be ascertained. She asserted that in any event the Respondent had not said that the Bank accounts listed in the application do not belong to the late **Edward Abondo Kisero**. Based on legal advice, the Respondent believed that this Court has the jurisdiction and powers to compel the banks to give information as to the status of said bank accounts and discretion to issue any orders to ensure the ends of justice are met.

17. The applicant however insisted that the estate that the late **Edward Abondo Kisero** had only one piece of land in Karachuonyo, which is un-adjudicated and whose location the applicant vividly knew and could identify. Based on legal advice, the applicant believed that nothing bars this court from treating the said property as an asset where it has been mentioned and a party can identify the same as belonging to the Estate particularly since the Respondent does not deny of the existence of the said land and or its inclusion of the same in the Estate of the Deceased.

18. According to the applicant, it was untruthful for the Respondent to say that there was no attempt to reach her for purposes of prior consultations as to the filing of this matter. The Applicant averred that soon after the death of the Deceased his elder brothers **Jaindi Kisero** (0721828824), **Bill Kisero** (0724225737) and **Pastor Kisero** (0722701189) called both of them for a meeting for purposes of discussing administration of the Estate herein but the Respondent declined to attend a meeting where the applicant was and instead met their brothers in law aforementioned together on the 9<sup>th</sup> September, 2018 at the Java, Koinange Street, Nairobi wherein, the applicant was advised by her said brothers in law, that the Respondent categorically stated that she had nothing to discuss with the applicant.

19. According to the applicant, the Respondent attempted to obtain a Chief's letter indicating that she was the sole beneficiary of the Estate but the Chief declined since he knew all of them. The Chief of my husband's rural area, Kokoth Kateng Location, one **Daniel Gor Otondo** (0704944115), called both of us for a meeting but the Respondent declined to attend the meeting necessitating to issuance of a letter dated 5<sup>th</sup> September, 2018 to the applicant, which her advocates advised her ought to include the names of the children of the Deceased hence the subsequent one of 12<sup>th</sup> September, 2018.

20. The Applicant reiterated that as the eldest widow of the Deceased she persistently called the Respondent via her mobile no. \*\*\*\*\* but she declined to pick the calls. As a result, the applicant sent her texts on the purpose of her calling and on 31<sup>st</sup> August, 2018 the Respondent texted that she would call back which she never did. The applicant disclosed that her brothers in law advised her that they informed her of the need of both of them to obtain grant of letters of administration for the Estate but the Respondent informed them that her brother is a lawyer and he will advise her accordingly.

21. The applicant insisted that the Respondent is in exclusive control of all the assets listed as comprising of the Estate of the Deceased and that the Respondent seems determined to disinherit the applicant and her children.

22. In her submissions the applicant relied on in the case of **Jane Sella Wanja Amos vs. Mary Igandu Njagi [2016] eKLR** where the Court observed that the case of **re Estate of Arthur Nganga Njuguna Ndoro (Deceased)**.

23. On the part of the Respondent it was submitted that the properties listed by the applicant and more specifically the Businesses, Companies and the Bank accounts do not qualify as free property under the law of succession if at all they are a going concern. She relied on the case of **Romana Chepkemboi Yego & Anor vs. Jane Njuguna & Anor (2017) eKLR**.

24. According to the Respondent, the issues herein are not matters to be resolved within the scope of grant of letters of administration for a special purpose *Ad Colligenda Bona*. The applicant in her submissions acknowledges that the businesses/companies belong to both the deceased and the respondent. There is no evidence to support whether the said businesses are a going concern or not. Even if the said businesses/companies were a going concern, the value of the businesses/companies is not yet determined. The liabilities of the businesses have also not been established. The value of the respondent's shares and contributions in the businesses has to be established. This can only be done if the businesses are valued and the shares and contributions of the deceased and the respondent are established. It would be unfair and highly pre-judicial to the respondent if the applicant is to be made an administrator of the businesses to which the respondent has shares without determining the extent of the deceased ownership.

25. According to the Respondent, the only thing that the applicant has done is to list down a list of business and company names allegedly owned by the deceased but has not proved their existence. There is also nothing to prove that the businesses/companies were solely owned by the deceased. One is not even able to tell who the Bank accounts listed by the applicant belong to. It is strange that whereas the applicant seems to have the account numbers of the said accounts alleged to belong to the deceased, she alleges not to know under whose account names they belong to. The law is clear that he who alleges must prove. If the applicant alleges that indeed the Bank accounts indicated belong to the deceased then it's upon her to provide this court with evidence in support of the same. If the applicant alleges that the businesses listed in paragraph 5 of her supporting affidavit, forms part of the deceased estate and that they are a going concern, the burden of proof lies on her. Merely annexing registration certificates is not proof enough that the businesses are in existence. The orders being sought in the event that they are to be issued would present serious challenges in their implementation because of the ambiguity of the applicant's case.

26. As regards the allegation of intermeddling, the Respondent relied on **re Estate of M'Ngarithi M'Miriti [2017] eKLR**.

27. According to the Respondent, apart from the mere allegations by the applicant that the respondent is intermeddling with the deceased estate, no evidence has been laid down to support the said allegations. The documents attached by the applicant clearly show that the alleged businesses belong or belonged to both the respondent and the deceased. The applicant owed the honourable court the duty to show and prove that the respondent has tampered with the deceased shares or ownership in the businesses as that is where the claim lies.

28. With respect to orders of injunction sought, the Respondent relied on the decision of **Mativo, J** in **Samuel Kamiri Chrispho vs. John Njeru Kahihu [2015] eKLR**.

29. It was therefore submitted that the applicant has not demonstrated to the honourable court the damages that she is likely to suffer if her application is declined. She has not even proved the loss she claims that she continues suffer in the event that the injunction is not granted cannot be quantified. She has not stated in which ways the subject matter herein can be destroyed by the respondent. On the other hand and through the documents produced in court by the applicant and through the applicants own admission, it is not in dispute that the respondent has shares in the some of the businesses claimed by the applicant. She is running the businesses as one of the owners and not as an intermeddler. By allowing the injunctive orders being sought by the applicant, it will mean that the businesses that the respondent owns will close down occasioning irreparable damages and loss to the respondent.

30. It was therefore submitted that applicant has clearly not demonstrated that she stands to suffer more than the respondent if the injunction is not granted. If anything, the applicant is seeking an injunction on assets that she cannot even identify and verify their existence. She has even gone ahead and accused the respondent of diverting money from the deceased accounts to her personal account and yet she claims not to have details of the said accounts. There is no evidence also in support of the same. There is even nothing to prove the Bank accounts listed by the applicant belong to the deceased. There is no evidence that the respondent has tampered with the ownership of the businesses and or deceased shares. The applicant has failed to demonstrate the nature of intermeddling and wastage being alleged.

31. On balance of convenience, it was submitted that the applicant has not shown how she stands to suffer if the injunction is not sought, the balance of convenience tilts in favour of the respondent.

32. As regards the management of the deceased's assets, it was contended that since the assets that are said to belong to the deceased cannot be ascertained at this stage the current status quo should be maintained until the deceased assets can be verified. To the Respondent, the applicant cannot purport to make an application to manage and or administer the interests held by the respondent and yet she cannot determine the extent that the deceased owned the said assets.

33. On the issue of the respondent being ordered to lender an account of the deceased estate, it was submitted that the same is preposterous in view of the fact that she is not a legal representative of the deceased estate.

#### **Determination**

34. I have considered the application, the affidavits both in support of and in opposition to the application as well as the submissions filed.

35. Section 45 of the **Law of Succession Act** provide as follows:

*(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.*

*(2) Any person who contravenes the provisions of this section shall—*

*(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and*

*(b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.*

36. I associate myself with the opinion of **Musyoka, J** in **Veronica Njoki Wakagoto (Deceased) [2013] eKLR** that:

**“The effect of [section 45]...is that the property of a dead person cannot be lawfully dealt with by anybody unless such a person is authorised to do so by the Law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”**

37. I also agree with the position in **re Estate of M'Ngarithi M'Miriti [2017] eKLR** that:

**“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the Law of Succession Act. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very**

serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the Law of Succession Act. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

38. In this case I must respectfully say that both the applicant and the Respondent have not been very helpful to this Court. The applicant has not placed before this court concrete material on the basis of which this Court can conclusively find that the assets mentioned belong to the Estate of the deceased. On the other hand the Respondent without denying the existence of the said assets has simply in an evasive manner contented herself with saying that it has not been proved that the said assets belong to the deceased's estate. It is however telling that in her sworn affidavit, the Respondent has deposed that the applicant's purported apprehension is unwarranted and merely a scheme to hoodwink the Court into dispossessing her of her businesses that she struggled to build over the years, together with the deceased. What this means is that at least in some of the assets mentioned, the deceased had an interest. In fact apart from **Abondo Restaurant Limited** which *prima facie* seems to be an incorporated entity, no one can tell the nature of the other businesses. Be as it may, even where the entity is incorporated, the shares of a deceased therein may well be subject of administration even though that does not necessarily make the administrators the managers of the business in question. I therefore agree with the position in **Romana Chepkemboi Yego & Anor vs. Jane Njuguna & Anor [2017] eKLR** that:

“...it is now settled law that a duly incorporated company is a separate and distinct legal entity different from its shareholders and directors. This is why it has perpetual succession and has the power to acquire property in its own name... in this case, the certificates of lease annexed to the 1<sup>st</sup> petitioner's supporting affidavit conclusively proves that the suit properties were at the time of the deceased death registered in the name of Roschilds Properties Ltd. They were therefore owned by the Company and not the deceased. The deceased was only a shareholder in the Company and he was only entitled to the share or shares he held and not the assets of the company. The shares of a Company are different or are not synonymous with the assets owned by Company as insinuated by the objectors in their submissions.”

39. With respect to the bank accounts, if the same are in the names of the deceased or joint names of the deceased and the Respondent, the same are subject to the administration to the extent of the deceased's portion. The position in **Jane Sella Wanja Amos vs. Mary Igandu Njagi [2016] eKLR** therefore supports this view when it holds that:

“the proceeds in the bank accounts belong to the deceased and form part of the estate...For the school business, the applicant or any of the other beneficiaries may change particulars of the business name and open and run new bank accounts for the use and running of the said school. Only after a full grant of letters of administration has been issued and confirmed can the administrators have full access and distribution of the funds in the said accounts”.

40. Therefore if some of the assets mentioned are in the joint names of the deceased and the Respondent, and the said assets do not belong to incorporated entities, then the applicant's case that the Respondent is intermeddling may well have substance. In **Mrao vs. First American Bank of Kenya LTD & 2 Others (2003) KLR 125**, it was held that:

“The principles which guide the Court in deciding whether or not to grant an interlocutory injunction are, first, an applicant must show *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience...A mere scintilla of evidence can never be enough: nor can any amount of worthless discredited evidence. It is true that the Court is not required at that stage to decide finally whether the evidence is worthy of credit, or whether if believed it is weighty enough to prove the case conclusively: that final determination can only properly be made when the case for the defence has been heard. It may not be easy to define what is meant by “*prima facie* case”, but at least it must mean one on which a reasonable tribunal, properly directing its mind to the law and the evidence could convict if no explanation is offered by the defence...The terms “*prima facie*” case, and “*genuine and arguable*” case do not necessarily mean the same thing, for in using another term, namely a sustainable cause of action, the words “*prima facie*” are frequently used to refer to a case which shifts the evidential burden of proof, rather than as giving rise to a legal burden of proof in the manner of considering, which was in relation to the pleadings that had been put forward in the case. It would be in the appellant's interest to adopt a *genuine and arguable* case standard rather than one of a *prima facie* case, the former being the lesser standard of the two...In civil cases a *prima facie* case is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A *prima facie* case is more than an *arguable* case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an *arguable* case”.

41. It was therefore appreciated by Ringera, J in **Martha Khayanga Simiyu vs. Housing Finance Co. of Kenya & 2 Others Nairobi HCCC No. 937 of 2001 [2001] 2 EA 540** that:

“the law is not that an interlocutory injunction can never issue where damages would be an adequate remedy and the Respondent is in a position to pay them. That is the normal course but not the invariable course. The court has to take into account the conduct of the Respondent and the gravity of the breaches of law or contract alleged otherwise it would confer a *carte blanche* on those who are rich enough to pay all quantum of damages to ride roughshod over the rights of other persons. The rich do not fear to pay damages and they must be compelled to submit to the authority of the law by being put to other perils.”

42. It is therefore clear that the issues raised herein cannot be determined at this stage. However, sections 47 of the ***Law of Succession Act*** provides as follows:

***The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.***

43. It is therefore clear to my mind that the deceased's estate ought to be protected and this court has the power to do so. The applicant and the respondent are the widows of the deceased. It is important that they come together to ensure that the estate of the deceased is not dissipated. Whether the assets set out belong to the estate of the deceased or not it is my view that a special limited grant of letters of administration ought to issue jointly to the applicant and the respondent to preserve the estate of the deceased. Rule 36 of the ***Probate and Administration Rules*** provides that:

***(1) where, owing to the special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defunct of the estate of the deceased.***

***(2) Every such grant shall be in Form 47 and be expressly limited for the purpose only of collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the estate and until a further grant is made.***

44. I agree with the position adopted in Sheila Nkatha Muthee –vs- Alphonse Mwangemi Munga & Others [2016]eKLR that:

***“the issuance and purpose of a grant of letters of administration ad colligenda bona is... to enable the [applicant] to collect, give entry, receive the estate and do such acts as may be necessary for the preservation of the estate of estate of the deceased until the grant is made.”***

45. Accordingly limited grant of letters *ad colligenda bona* will issue to the applicant and the respondent to jointly administer the deceased's estate. The said parties are further directed to commence proceedings leading to the grant of representation in respect of the deceased's estate. If the Respondent is still not cooperating as alleged the applicant is at liberty to take out a citation.

46. I also direct that pending further orders of this Court the income accruing from the following shall be deposited in a joint account to be opened in the name of the deceased's estate;

**i) Abondo Interiors Studios (Furniture Workshop business at Gikomba Market).**

**ii) Abondo Restaurant (Restaurant business at Lutheran Plaza).**

**iii) Janaby Essentials (Wines and Spirits Business)**

**iv) Monies at Account No. \*\*\*\*\*, Bank of Africa, Kenyatta Avenue.**

**vi) Monies at Account No. \*\*\*\*\*, Paramount Bank of Africa, Chester House, Koinange Street.**

47. I further direct the parties herein not to dispose of the said piece of land in West Karachuonyo Division, Rachuonyo North Sub-County and not to dissipate the account Nos. No. \*\*\*\*\*, Paramount Bank of Africa, Chester House, Koinange Street and \*\*\*\*\*, Bank of Africa, Kenyatta Avenue. An order is however issued directing the said Banks to furnish the Court with the particulars of the said accounts upon service of this order upon them by the applicant. As regards the Karachuonyo parcel, the area Chief is directed to avail the particulars and its status.

48. I further direct the parties herein not to intermeddle with any of the deceased's known properties unless otherwise directed by this Court. As regards the order for account section 83(e) the Act sets out one of the duties of personal representatives as follows:

***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.***

49. In this case it is clear that there is as yet no legal representative in respect of the estate of the deceased herein. Consequently, the Respondent cannot be compelled to render an account in respect of the estate of the deceased, though intermeddling therewith if proved may well make her liable lack of grant notwithstanding since section 45(2)(b) of the Act states that she *would be answerable to the rightful executor or administrator, to the extent of the assets with which she has intermeddled after deducting any payments made in the due course of administration.*

50. As both parties have not been forthright with respect to the deceased's estate, there will be no order as to the costs of this application.

51. It is so ordered.

**Read, signed and delivered in open Court at Machakos this 5<sup>th</sup> day of February, 2019.**

**G V ODUNGA**

**JUDGE**

**Delivered in the presence of:**

**Ms Kamende for the Applicant**

**N/A for the Respondent**

**CA Geoffrey**