



**REPUBLIC OF KENYA**

**IN THE KADHIS COURT AT KISUMU**

**SUCCESSION CAUSE NO 28 OF 2014**

**IN THE MATTER OF THE ESTATE OF ABDO SEIF HASHID (DECEASED)**

**AZMARA ABDO SEIF.....APPLICANT**

**FATAMA ABDO.....1st RESPONDENT**

**SHADIA ABDO.....2nd RESPONDENT**

**JUDGEMENT**

**AZMARA ABDO SEIF** of Passport number A143798 referred herein as a petitioner filed a petition on 6<sup>th</sup> day of OCTOBER 2014

the petitioner claimed that : the deceased was her husband and He was survived by a widow and twelve children three sons and nine daughters.

The deceased left the following properties and estate:

- 1 - jaggery shared with an Indian NAREN PAU also deceased
- 2 - plot in YALA but undeveloped
- 3 - lorry sold by 1st respondent
- 4 - tractor
- 5 - trailers

The petitioner complained that the first respondent has been managing the properties but has refused to share the proceeds with her siblings addition to that the 1st respondent has gone to an extent of selling lorry without consulting the family and she know what she did .

the petitioner sought that: the first respondent has acquired big debts to a tune of sh 800,000 /= which can cause all the asset being auctioned if petitioner does not act fast.

the petitioner add that the family has decided not to distribute the estate because it is not enough for all of them.

The petitioner prayed for

- (a) The respondent to surrender all the assets in their possession back to the petitioner
- (b) trailer and tractor to enable her pay the incurred debts.

looking the side of first respondent she claimed that: she was not working in the machine initially she had her own business scrap mental she used to go to Dubai to buy things for sale she had a husband.

Her brother seif asked her to join him in management the businesses and to talk to her husband to boost the business. she talked to her husband who bought tires drums of diesel same capital and provide them same money for the businesses.

her sister Swabaha had a brain tumor and was to be taken to India for treatment she asked her husband to help them but declined because he was not receiving any things from the machine lastly he gave them 450,000/= and Swabaha was operated on . she I invested another Sh 150000/= but the money was not returned .Then her family requested her husband to buy a new a tractor in 2004 - 2005 he bought but Norman refused that the tractor should not be enjoined the machine .

The first respondent sought that : she self Norman and ail started working in the mechanic she was accountant self was marketer Norman was in charge of maintenance they did businesses and paying her husband after one year they had adept of ksh 150,000/= then they paid 150,000/= and warned the respondent's husband to stop dealing in the business the first respondent also left the business she moved to another factory for her neighbor she took basin from their father's spare part she started from scratch bought her own spare her husband accepted to buy for her another tractor in 2007 .

the respondent claimed that Norman left the factory she requested him to allow her back in the company instead of paying rent to another person where she had rented .He accepted .there came Wedding for nomarn;s daughter the year 2012 she gave out sh 400,000/= after shadier request her to save the situation. after wedding business started coming down suddenly her brother Ali died She footed all the funeral bills trough the money was borrowed.

The respondent claimed that the second tractor broke the block Norman advised her to take the block from the first tractor and replace the second tractor .

the respondent sought that her mother (applicant) told her to leave machine for her sister naima but she told her to allow her finish her case caused by the accident but norman sent her out and said that he had taken over the machine . she proposed that norman and naima should join her instead of kicking her out .

the respondent admit that she bought the trailer from Norman and paid him 130,000/= without agreement.

on the other hand the second respondent claimed that there is money she gave the first respondent concerning the accident she believed that she would give her back but when the second respondent told Norman and the petitioner about the money they said they were not aware the money.

to support the issue the first respondent availed one witness namely Seif he testified confirming the respondent 's claim in respect of the canter and tractor . As the second respondent availed one witness namely farhia abdo she testified confirming the second respondent 's claim in respect of the her money.

I have noted the matter clearly and I found that: the first respondent she was shared the proceeds with her siblings and helped her family regarding Wedding for nomarn;s daughter the year 2012 used 450,000 expensive treatment .

the respondent admit that she bought the trailer from Norman and paid him 130,000/= without agreement and it was family property.

the second respondent said that she can only release the tractor if she was paid 300000.

the first respondent admitted that she took the block from the first tractor and replace the second tractor which was her property.

upon hearing both parties herein and their witness the mater to be determine are :

(a) whether The respondent to surrender all the assets in their possession back to the petitioner as petitioner prayed for?

(b) Is it compulsory for the petitioner to pay 300000 to shadia as the first respondent preyed for .

(c) who is responsible for payment of 350000 to mulunda and sh 120000 to mua ?

Referring to issue (a) it is clear to this court that the first respondent is not willing to go back to the jaggery although she excepted to return the block but refused to surrender the tractor.

whoever will take over the running of the factory will pay the second respondent the amount she gave out for the sake of reviving the factory .

and the same will apply to issue c

on this basis this court finds it justice to appointed the petitioner ( zahara) to run the factory from now henceforth .

2- the firs respondent should retune the block and any other spear at spear part in her possessions to the petitioner and vise vice

3- the first respondent to return the trailer to the petitioner immediately as the trailer was the family asset sold to her illegal without approval the family member she did not produced an agreement of sell .

4 the second respondent should return the trailer in possession to the petitioner to enable the petitioner make business with it and pay her 50000 ksh monthly till the total amount of 30000 is complete this is with effect from January. filer to do so by the petitioner the trailer shall

be declared the property of the second respondent

5 about the pica up the court adopts the consent made between seif and the first respondent before this court

6 - the petitioner remains as administrator of the estate of the late abdo saif until she decide otherwise

IR/ A -30 days

Read and delivered this 8th day of DECEMBER 2014

in the presence of.

Mursal.M.Sizi-----kadhi

court Assistant-----Rehema Akidah

presence of;

-MURSAL .M .SIZI- KADHI 11

-Court Assistant -Rehema Akidah,

Petitioner-

-Respondent