



REPUBLIC OF KENYA



Rehal v Rehal (Civil Suit E018 of 2023) [2024] KEHC 13603 (KLR) (31 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13603 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL SUIT E018 OF 2023
RE ABURILI, J
OCTOBER 31, 2024**

BETWEEN

AMARDEEP SINGH REHAL PLAINTIFF

AND

KARMJIT KAUR REHAL DEFENDANT

RULING

1. The applicant filed an application dated 18th December 2023 in which he sought the following orders
 - a. Spent
 - b. That pending the hearing and determination of this application, the Honourable Court be pleased to grant an order compelling the respondent to release Kshs. 4,000,000 being part of the ordered amount to the applicant for settlement of the applicant's medical bills.
 - c. That pending the hearing and determination of the main suit herein, this Honourable Court be pleased to grant an order compelling the respondent to release to the applicant Kshs. 4,000,000 being part of the claimed amount by the applicant for settlement of his hospital bills.
 - d. That costs of the application be awarded to the applicant.
2. The application was predicated on the grounds on the face thereof as well as the applicant's supporting affidavit sworn on the 18th December 2023.
3. It was the applicant's case that he was a beneficiary of the estate of the deceased Harvinder Singh Rehal and thus entitled to an outstanding Kshs. 4,000,000 and a monthly payment of Kshs. 100,000 as directed by the court in Kisumu Succession Cause No. 768 of 2009 in 2017 which amounts the respondent was yet to settle thus accumulating to Kshs. 7,743,75.92 as at the time of filing suit.



4. The applicant further averred that he needed the funds to settle the bills accruing from his monthly dialysis as his medical insurance cover had been depleted and thus he stood to suffer irreparable loss and damage if the orders sought were not granted.
5. Mr. Onyango Counsel for the applicant submitted that the payment of Kshs. 7,500,000 to the applicant followed the sale of Kisumu Municipality Block 6/14 wherein the respondent shared the proceeds equally amongst all the beneficiaries and that the said amount was for accumulated funds owed to the applicant from 2015 to August 2017 and that subsequently, the applicant had not received any money from the respondent.
6. Mr. Onyango further submitted that the respondent collects rent of over Kshs. 1.2 million from one building that has flats and shops and that on the 27.8.2024 the applicant received Kshs. 9,000 from the respondent, Kshs. 20,000 on the 2.9.2024 and Kshs. 20,000 on the 20.9.2024 totaling Kshs. 49,000 which was much below the Kshs. 100, 000 ordered monthly.
7. In response, the respondent swore a replying affidavit on the 11th June 2024 in which she deposed that the instant application was a misnomer, an afterthought an abuse of the court process, that she never knew of the proceedings herein and only became aware of this court's orders made on 9th May 2024 on the 13th May 2024.
8. It was the respondent's assertion that the applicant's claim ought to have been against the estate of the deceased and not her as she was a mere beneficiary just like him. She further deposed that there was no estate left as the grant in the succession cause relied on by the applicant was confirmed on the 10th June 2014 and later the estate distributed in accordance with the deceased's will.
9. The respondent contended in deposition that in accordance with the certificate of confirmed grant, she did sell one property bequeathed to being Kisumu Municipality Block 614 and paid the applicant Kshs. 7,500,000 in settlement of future payments.
10. The respondent further deposed that the applicant was her dear son and that he had never sought help from her prior to the instant suit.
11. In their submissions, parties' counsel reiterated the depositions in their respective affidavits. The respondent added that there was no evidence that the respondent received any rent from a flat and that this being a family matter, it could be resolved if the applicant approached the respondent.

Analysis & Determination

12. As was observed in my ruling of 13.8.2024, on the 26.1.2022, Hon. Justice F.A. Ochieng (as he then was) in Kisumu High Court Succession Cause No. 768 of 2009 made orders that the respondent herein pay the applicant a sum of Kshs. 4,000,000 computed at the rate of Kshs. 100,000 from August 2017 to January 2022 and subsequently, the respondent to continue remitting to the applicant Kshs. 100,000 monthly as per the Certificate of Confirmation of Grant dated 2nd July 2014, which orders and Certificate of Confirmation of Grant had never been set aside.
13. The applicant in his instant application seeks to have the said orders effected in that he is seeking an order compelling the respondent to release Kshs. 4,000,000 being part of the ordered amount to the applicant for settlement of the applicant's medical bills.
14. The respondent herein has never complied with the orders of 26.1.2022 and insists that she is a mere beneficiary to the estate of the deceased and thus ought to have not been sued in his personal capacity.



- Further, the applicant avers that she did sell one of the properties bequeathed to her being Kisumu Municipality Block 614 and paid the applicant Kshs. 7,500,000 in settlement of future payments.
15. The succession court record however reveals that the amount claimed by the respondent to have been paid to the applicant compromised monies that covered the period of 2015 to August 2017 as was noted by Justice Ochieng in his earlier ruling of 20.9.2021.
 16. It is therefore crystal clear that the respondent is in outright brazen contempt of the orders of 26.1.2022 and as I observed in my ruling of 13.8.2024, it would be meaningless to punish her for contempt of court due to her old age, immobility and state of ill health.
 17. Further, despite her allegation that she is a mere beneficiary to the deceased's estate and should not have been sued in her personal capacity, I do reiterate my previous holdings that the whole of the real and personal estate of the deceased's devolved upon the respondent wholly and that subsequently, the applicant was to be provided for with a monthly upkeep of Kshs. 100,000.
 18. Thus, the respondent was the primary beneficiary of all real property in the estate while the applicant is the secondary beneficiary who was to be provided for by the respondent from what the respondent received absolutely. That is the essence of the will in question.
 19. Conversely, this court acknowledges the applicant's illness and the urgent need for funds to settle his medical Bills and enable him receive medical attention using the monthly payments of Kshs 100,000 from the respondent, not as a favour but as a right. If that fails completely, then the applicant may proceed and attach and dispose of the respondent's assets for recovery of the outstanding sums due to him, off course, following the laid down procedure for sale of immovable property in execution proceedings.
 20. Having found that the orders which are being sought by the applicant are merited, I grant prayer (c) of the application and order as follows:

That pending the hearing and determination of the main suit herein, the respondent shall release to the applicant Kshs. 4,000,000 being part of the claimed amount by the applicant for his upkeep and settlement of the applicant's hospital bills.
 21. However, I do note that the respondent from her replying affidavit sworn on the 11th June 2024 as well as from oral submissions made by her advocate, is willing to discuss with the applicant who is her son to have this matter settled amicably as a family.
 22. Therefore, in addition to the above order in paragraph 20 of this ruling, I direct the parties to get together and discuss the best mode of release of the ordered sums of money to the applicant and the timelines. The parties shall then appear before the Deputy Registrar of this Court within 14 days of this ruling to record that mode of settlement of the accumulated monies owed to the applicant as well as the settlement of the monthly dues of Kshs. 100,000 and subsequently file a report of the same for a consideration by this court. In default of any agreement, the applicant is at liberty to apply for enforcement of this order.
 23. Mention on 3/12/2024 to confirm compliance and for further directions.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 31ST DAY OF OCTOBER, 2024

R.E. ABURILI

JUDGE

