



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Kanwaljit Singh Chadda (Deceased) (Succession Cause
31 of 2019) [2023] KEHC 3052 (KLR) (Family) (30 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 3052 (KLR)

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

FAMILY

SUCCESSION CAUSE 31 OF 2019

EKO OGOLA, J

JANUARY 30, 2023

BETWEEN

PARMINDER SINGH CHADDA APPLICANT

AND

MARILYN MERCY WANJIRU RESPONDENT

RULING

1. Before the court are two applications for determination. The first application is the Notice of Motion by the Objector herein Parminder Singh Chadda dated October 25, 2019. The second Application is the Notice of Motion by the Administrator Marilyn Mercy Wanjiru dated November 25, 2019.

Notice of motion dated 25th October 2019

2. The Application seeks the following Orders
 1. Spent
 2. That pursuant to prayers 3,4, and 5 of the Summons for Revocation of the Grant herein dated September 3, 2019, the said Marilyn Mercy Wanjiru be ordered to deposit in court all the money she collects and/or has collected on her behalf by any servants, agents or whatsoever being rent due from the deceased's properties in Nairobi namely the building on L.R. 209/118/38 and L.R 1870.IV/157
 3. That costs be in the cause
3. The application is premised upon sections 29, 79 and 82 of the *Law of Succession Act* and Rule 44 of the *Probate and Administration Rules*. It is based on the grounds set out therein and a further affidavit dated October 24, 2019.



4. The objector's case is that an Order was given on October 7, 2019 requiring the DCI to examine some documents including the marriage certificate between the deceased and the Administrator herein. The DCI examined the documents and issued a report. That the DCI's report concluded that the deceased's signature on the Marriage Certificate used to obtain the Grant of letters of Administration was forged.
5. It is the objector's case that since the deceased died on October 31, 2018, the Administrator has been collecting the rental income from the deceased's property and applying the said income for her personal use. The objector prays this court to direct the Administrator to deposit in court the rental income she has collected until the Application for Revocation of Grant is determined. This according to the objector shall preserve the estate of the deceased and prevent it from wastage.
6. The objector avers that one Ravinder Grewal informed him that the rental income collection from the two Nairobi properties is between Kshs. 180,000/= to kshs. 300,000/=
7. In response the Administrator filed Grounds of Opposition dated November 25, 2019 opposing the Application in the following grounds: -
 1. That the objector/applicant's application is an abuse of the court process as the applicant is delaying the inevitable conclusion of this cause
 2. That the report by the Directorate of Criminal Investigation which the objector/applicant's application is based on was obtained in an unlawful manner
 3. That the objector/Applicant did not obey the court Order of October 7, 2019 issued on October 9, 2019 in obtaining the report by the directorate of Criminal Investigations on which his application dated 25th October is based.
 4. That the objector/ applicant obtained the court order of October 7, 2019 issued on October 9, 2019 through non-disclosure of material facts to the court
 5. That the administrator/respondent prays that the Application herein be dismissed.

Notice of Motion dated 25th November, 2019

8. The Application seeks the following Orders
 1. Spent
 2. That pending the hearing and determination of this application, this honorable court be pleased to stay its orders given on October 7, 2019 and issued on October 9, 2019
 3. That this honorable court be pleased to review and or vary its order given on October 7, 2019 and issued on October 9, 2019 by directing that the applicant and the respondent to respectively appoint independent handwriting experts at their own expense to compare the file respective report on consistency of the signature of Kanwaljit Singh Chadda contained in the power of attorney dated June 8, 2016, email in issue and the marriage certificate between the deceased and the applicant and known signature(s) of the deceased
 4. That the handwriting experts be persons who are not in the employment of the Directorate of Criminal Investigations
 5. That the Honorable court be pleased to direct that the handwriting experts be restricted to use of original documents
 6. That costs be in the cause.



9. The application is premised upon article 159 of the Constitution of Kenya, sections 29, 79 and 82 of the Law of Succession Act, Rules 59 and 73 of the Probate and Administration Rules, Order 45 of the Civil Procedure Rules 2010 and all other enabling provisions of the Law. It is based on the grounds set out therein and supported by the affidavit Marilyn Mercy Wanjiru dated November 25, 2019.
10. The Administrator's case is that the objector's Advocate moved the court orally on October 7, 2019 and obtained the Order dated October 9, 2019 directing the DCI to analyze and examine the signature contained in the power of attorney of Kanwaljit Singh Chadda (deceased), the signature contained in the email drawn by the deceased and the signature of the marriage certificate between the deceased and Marilyn Mercy Wanjiru and compare the same with the signatures contained in the deceased's I.D number 4847134. The Administrator states further that the order was obtained through non-disclosure of the fact that the process of investigation had begun long before the Order was issued. The Administrator's contention is that the DCI's impartiality in conducting the examination is questionable.
11. According to the Administrator, the Order directed that the submission of the documents to the DCI be done jointly by the Advocates of both parties. However, the Objector maliciously, intentionally and single-handedly delivered the documents to the DCI without involving the Administrator's Advocate.
12. The Administrator avers that the purported marriage certificate was a photocopy document purportedly obtained from the office of the Attorney general on September 11, 2019. That the original email, power of attorney and certificate of marriage were not submitted to the DCI.
13. The Administrator contends that she is a legitimate administrator of the estate of the deceased and that she is duly carrying out her obligations.
14. In response, the objector filed a replying affidavit dated January 31, 2020.
15. The objector's case is that the review sought by the Administrator may now be overtaken by events since on November 27, 2019 the applicant was charged with forgery in Criminal case 1996 of 2019. The forensic report forms part of the evidence in the criminal case.
16. The objector avers that the Administrator is a layman who is not versed with knowledge of forensics and therefore cannot reject the findings of the DCI.
17. The objector in response to the Administrator's claim that the documents to be investigated were acquired before the Orders of the court were issued has stated that; the documents were acquired earlier for use as exhibits in the application for Revocation of Grant and also for an Application he had filed in Succession Cause 171 of 2019; that the said documents informed the issuance of the Order of October 7, 2019.
18. The objector avers that at one time he was perusing the exhibits annexed to the Petition for Grant of letters of Administration together with his close relatives and friends of the deceased when they realized that the signature on the Marriage Certificate No. 27140 dated July 27, 2018 differed greatly from the deceased's usual signature. The objector then became suspicious and reported the matter to Central Police Station under O.B Number 68 of 16/7/19. The Administrator appeared at the police station and was informed of the allegations made against her. According to the objector, the Administrator was therefore aware that she was under investigation for forgery.

Determination

19. I have carefully considered the Applications, the affidavits and the Written Submissions by both parties. The issues arising for determination are:



- i. Whether the Orders made by the court on October 7, 2019 and issued on October 9, 2019 should be stayed
- ii. Whether the Orders made by the court on October 7, 2019 and issued on October 9, 2019 should be reviewed
- iii. Whether the Administrator should deposit the rent collected from the deceased's houses to court

Whether the Orders made by the court on the October 7, 2019 and issued on November 9, 2019 should be stayed

20. The court order issued in court on October 7, 2019 and dated October 9, 2019 reads as follows: -
1. That the DCI be and is hereby directed to analyze and examine the signature contained in the power of attorney made and signed on the 8th June, 2016 purportedly by one Kanwaljit Singh Chadda (donor) and the deceased herein, the signature contained in email drawn by the deceased and marked as annexure 9 in support of the said Affidavit, together with the signature in the marriage certificate between the deceased and the applicant Marilyn Mercy Wanjiru and compare the same with signatures contained in the deceased's I.D No. 4847134
 2. That the document examiner to confirm whether the signatures contained in the said documents named above were made by the same hand
 3. That the four documents to be submitted to the DCI under the joint names of both the counsels
 4. That mention on December 3, 2019 to confirm filing of the report
 5. That the objector to meet the necessary costs for the examination
21. The Administrator has sought for stay of the above orders. The Stay has been sought after the Orders have already been implemented. The documents have already been presented to the DCI for investigation and a report has already been filed. Therefore, there is nothing for this court to stay as far as the orders in question are concerned.

Whether the Orders made by the court on the October 7, 2019 and issued on November 9, 2019 should be reviewed

22. Order 45, rule 1 of the *Civil Procedure Rules*, 2010 on Application for review of decree or order provides: -
- (1) Any person considering himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.



- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review”
23. Order 45 of the *Civil Procedure Rules*, 2010 is very explicit that a court can only review its orders if the following grounds exist: -
- (a) There must be discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the applicant at the time the decree was passed or the order was made; or
 - (b) There was a mistake or error apparent on the face of the record; or
 - (c) There were other sufficient reasons; and
 - (d) The application must have been made without undue delay.
24. In the instant case, the Administrator has not demonstrated that there has been discovery of new matter that was not within her knowledge when the decree was made. She has also not demonstrated the presence of an error apparent on the face of the record. She only seeks review stating that the objector had already begun investigations before the Orders were made. The objector has explained that these documents were availed by the Administrator with the Petition for letters of Administration. The objector scrutinized the documents and suspected forgery. The objector reported the same to the Central Police Station, the Administrator was aware of the investigation. The objector stated that the documents were the subject of the Application that led to the orders in question. There had to be an investigation carried out by the objector to inform an application seeking orders for investigation. If not, such an application would not exist. Therefore, this is not a reason to warrant review of the Orders of the court.
25. I have not found any existing ground for review therefore the prayer seeking review of the orders of October 7, 2019 is declined.

Whether the Administrator should deposit the rent collected from the deceased’s houses to court

26. The objector herein sought to revoke the Grant of Letters of Administration issued to the Administrator due to the suspected forgery. During the pendency of the Revocation Application, the Objector filed the application date October 25, 2019 seeking that the Administrator who has been collecting rent from the deceased’s property be directed to deposit the rent with the court pending the determination of the Application for revocation.
27. The objector sought this prayer due to the results of the Order of October 7, 2019. When the documents were submitted to the DCI, the marriage certificate between the deceased and the Administrator was found to be a forgery. The objector has argued that when the objector is directed to deposit the rent into court, it will prevent wastage of the deceased’s estate.
28. The Administrator has argued that the Forensic report by the DCI cannot be relied upon since the DCI did not act impartially. That the objector took the documents to the DCI without the knowledge of the Administrator. The Administrator has argued that the officer that investigated the documents is not an officer of the DCI. However, this allegation has not been proved.
29. The Administrator’s case was that the report by the DCI is not an expert opinion report. She even went ahead to subject the documents to the examination by one Mr. E Papa, a handwriting expert.



This was done without involving the court therefore the report by Mr. Papa cannot be admitted in this court as evidence.

30. The report of the DCI was prepared by one Mr. Daniel Gutu a forensic document examiner. He describes tests he subjected the documents to which revealed that the signatures were made by different authors.
31. In *Christopher Ndaru Kagina vs. Esther Mbandi Kagina & another* [2016] eKLR the court stated that -

“The fundamental characteristic of expert evidence is that it is opinion evidence. To be practically of assistance to a court, however, expert evidence must also provide as much detail as is necessary to allow the court to determine whether the expert’s opinions are well founded.

While the test for admissibility of expert evidence differs from jurisdiction to jurisdiction, judges in all jurisdictions face the common responsibility of weighing expert evidence and determining its probative value. This is no easy task. Expert opinions are admissible to furnish courts with information which is likely to be outside their experience and knowledge. The evidence of experts has proliferated in modern litigation and is often determinative of one or more central issues in a case. Expert testimony, like all other evidence, must be given only appropriate weight. It must be as influential in the overall decision-making process as it deserves; no more, no less. To my mind, the weight to be given to expert evidence will derive from how that evidence is assessed in the context of all other evidence and the circumstances of the case including the real likelihood of the expert witness having been compromised or the real possibility of such witnesses using their expertise to mislead the court by placing undue advantage to the party in whose favour they offer the evidence. The court must be alert to such realities and act with caution while analyzing such evidence. It is important to bear in mind the criteria a court should use to weigh the probative value of expert evidence. This is because, while expert evidence is important evidence, it is nevertheless merely part of the evidence which a court has to take into account.”

32. The Administrator raised an issue that the objector presented the documents to the DCI without involving her or her Advocate. When you look at the Orders granted, paragraph 4 of the order 4 reads “That the four documents to be submitted to the DCI under the joint names of both the counsels”. The Order does not read that both counsel shall take the documents to the DCI offices as the Administrator has alleged. The Objector has attached to his Application a document addressed to the DCI forwarding the documents for forensic investigation. The letter is signed by Advocates of both parties. Therefore, the document is in compliance with the order of the court.
33. The courts use expert opinions simply because they may not be versed with the knowledge that an expert witness may have. The forensic report by DCI shows that the marriage certificate was forged. There is also an ongoing criminal case against the objector where she has been charged with forgery. This a reason enough to want to protect the estate of the deceased person. The objector wants the Administrator to deposit to court, the rent collected from the deceased’s properties. The objector is relying on information from another person who informed him that the Administrator collects rent using Limited Grant to collect rent. The objector is relying on hearsay and has not provided proof in any documentation of the rent collected.



34. Section 107 of the *Evidence Act* 80 provides that;

“Whoever desires any court to give judgment as to any legal right or liability dependent on existence of facts which he asserts must prove those facts exist.”

35. For the court to be able to order the Administrator to deposit the rent collected with the court, he has to show the amounts and from which month the Administrator collected the rent. This has not been done. In any event the matter of accounts can be part of the distribution of the estate.

36. From the foregoing, this court makes the following Orders.

1. The objector’s Application dated October 25, 2019 is dismissed**
2. The Administrator’s Application dated November 25, 2019 is hereby dismissed for lack of merit.
3. In the consideration that the DCI report finds the Administrator to have committed forgery, the Administrator is hereby stopped from dealing with the Estate of the deceased in any way pending the determination of the Application for revocation.
4. Costs shall be in the cause

Orders Accordingly

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JANUARY 2023.

E.K. OGOLA

JUDGE

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

M/s Omuya hold brief for M/s Simiyu for the Administrator

Mr. Oigara for the Objector

Ms. Gisiele Court Assistant

