



**In re Estate of Riyaz Tajdin Rahemtulla Dhinji (Deceased) (Succession Cause 1331 of 2016) [2023] KEHC 21823 (KLR) (Family) (4 August 2023) (Judgment)**

Neutral citation: [2023] KEHC 21823 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**SUCCESSION CAUSE 1331 OF 2016**  
**MA ODERO, J**  
**AUGUST 4, 2023**  
**IN THE MATTER OF THE ESTATE OF RIYAZ**  
**TAJDIN RAHEMTULLA DHANJI (DECEASED)**

**BETWEEN**

**SHAHNAZ AMIN AMERSHI ..... PETITIONER**

**AND**

**ALNOOR HASSAN EBRAHIM KASSAM ..... PROTESTOR**

**AND**

**ALEYA RIYAZ TAJDIN DHANJI ..... BENEFICIARY**

**JUDGMENT**

1. Before this Court is the Protest dated August 4, 2021 filed by the Protestor Alnoor Hassam Ebrahim Kassam.
2. The Respondent Aleya Riyaz Tajdin Dhanji opposed the Protest through her Affidavit in Response dated September 9, 2021, second Affidavit in Response dated October 12, 2021 as well as the Supplementary Affidavit dated September 15, 2021.
3. The matter was canvassed by way of written submissions. The Protestor filed the written submissions dated August 25, 2022 and filed Further submissions dated September 12, 2022.

**Background**

4. The Succession Cause herein relates to the estate of the late Riyaz Tajdin Rahenjulla Dhanji (hereinafter the Deceased) who died on 30<sup>th</sup> June, 2016. A copy of the Death Certificate Serial Number xxxx is annexed to the Petition for Grant Ad Colligenda Bona dated 24<sup>th</sup> August, 2016. The Deceased



- died testate having left behind a written will dated 21<sup>st</sup> May, 2013. A copy of the written Will appears as Annexure ARTD '2' to the Affidavit dated 24<sup>th</sup> August, 2016.
5. The sole beneficiary under the terms of the written Will was the daughter of the Deceased Aleya Riyaz Tajdin Dhanji.
  6. In his written Will the Deceased appointed his sister Shahnaz Amin Amershi (hereinafter 'the Petitioner') as sole Executrix and appointed his friend Alnoor Kassam (the Protestor herein) to be alternate Executor in the event that his sister was unable/unwilling to act as Executrix.
  7. Following the demise of the Deceased the Petitioner (daughter) sought and obtained a limited Grant of letters of Administration Ad Colligenda Bona which were issued to the Petitioner on 5<sup>th</sup> May, 2017.
  8. Thereafter the Petitioner filed a Petition for Grant of Probate with written Will dated 24<sup>th</sup> July, 2017. The Protestor then filed an Objection to the making of Grant and Cross Petition dated 9<sup>th</sup> September, 2017.
  9. The Grant of Probate was duly issued to the Petitioner on 28<sup>th</sup> October, 2019.
  10. The Petitioner then filed a Summons for confirmation of Grant. Under the terms of the proposed mode of distribution the estate was to devolve entirely to the Respondent who is the daughter of the Deceased.
  11. The Protestor then filed a protest to the mode of distribution of the estate dated 4<sup>th</sup> August, 2021. He claims an interest in some of the properties left behind by the Deceased as co-owner of the said properties.
  12. The Protestor argues that although in the Deceased his written Will bequeathed his entire estate to his daughter the Deceased did not include a list of the assets/properties which were to devolve to the Respondent. That the executrix had a duty to provide a full and accurate inventory of the estate. The Protestor avers that the list of assets provided by the Executrix was incomplete as she left out some assets including motor vehicles, machines etc. which have not been accounted for.
  13. The Protestor states that he was a business partner of the Deceased and that they owned several properties together. That in the proposed mode of distribution of the estate these jointly owned properties are allocated wholly to the Respondent leaving out the Protestor.
  14. The Protestor contends that the Deceased's daughter is only entitled to the residue of the estate after all third-party interests have been taken into account.
  15. The Protestor contends that if the Grant is confirmed and the proposed mode of distribution approved then he stands to suffer irreparable harm.
  16. The Protestor urges the court to allow for only a partial transfer of the estate and prays that any distribution of the estate exclude the disputed properties. He also prays that the Respondent be compelled to account for all rental income derived from the disputed properties from the year 2016 to date.
  17. The Respondent and the Petitioner vehemently opposed the Protest. They asserted that the properties in dispute are all registered in the names of the Deceased and that the same belong solely to the Deceased.
  18. That the Protest filed is baseless unmerited and is only aimed at delaying the confirmation of the Grant. They urged the court to dismiss in its entirety the Affidavit of Protest dated 4<sup>th</sup> August, 2021.



## Analysis and Determination

19. I have carefully considered the Protest filed before this court. The replies filed thereto as well as the written submissions filed by both parties. The only issue for determination is whether the Protestor has established his claim to properties comprising the estate of the Deceased.
20. The Protestor claims that he is entitled to a fifty per cent (50%) share or the following properties:-
  - (a) Lavington Valley Apartment E10, LR No330/375
  - (b) Cedar Springs Flat – 5 Block B – LR No330/256
  - (c) Royal Comfort Apartment – LR No1870/VI/51
  - (d) Tulip Court Apartments Apt B4 – LR No28223/2
21. The Protestor complains that the Respondent collects the rental income from the above properties and utilizes said rent to the exclusion of the Protestor. That despite the existence of a court order directing the Respondent to deposit the rental income into a joint bank account the Respondent has failed to comply.
22. The Protestor avers that he instituted a suit in the Environment and Land Court (ELC) challenging the estates claim to sole ownership of LR No330/75 being ELC Suit No352 of 2021 which suit is still ongoing.
23. The Respondents oppose the claims being made by the Protestor. The Respondent states that the properties known as LR No282234/33 Tulip Court Apartments Apt B4 was acquired solely by the Deceased and is registered in his names.
24. It is trite law that he who alleges must prove. In law the burden of proof lies upon the party who asserts the existence of a fact or a set of facts. Section 107 of the *Evidence Act* Cap 80. Laws of Kenya provides as follows:-
  - “107 (1) whoever desires any court to give Judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
  - (2) When a person is bond to prove the existence of any fact it is said that the burden of proof lies on the person”.
25. The Affidavit in Support of the Summon for confirmation of Grant dated 4<sup>th</sup> June, 2021 sets out the mode of distribution of the estate as follows:-



No	Property	Beneficiary
1.	Maisonnette No2 erected on LR No209/8/4	Aleya Riyaz Tajdin Dhanji
2.	Apartment No4 erected on LR No209/91/8 Nairobi	Aleya Riyaz Tajdin Dhanji
3.	Apartment No B4 erected on LR No28223/2 Nairobi	Aleya Riyaz Tajdin Dhanji
4.	Apartment No B5 Cedar Springs erected on LR No330/256 Nairobi	Aleya Riyaz Tajdin Dhanji
5.	Apartment No B3 and C2 erected on LR No1820/IV/36	Shahnaz Amin Amershi
6.	Apartment No E10, erected on LR No330/375 Nairobi	Aleya Riyaz Tajdin Dhanji
7.	Apartment No C2 erected on LR No1870/VI/51 Nairobi	Aleya Riyaz Tajdin Dhanji
8.	House No 2 erected on LR No209/8367	50% Shahnaz Amin Amershi and 50% Aleya Riyaz Tajdin DHANJI
9.	Units 4 and 500 erected on LR No34/103/4 Nairobi	Aleya Riyaz Tajdin Dhanji
10.	Land referenced as LR No29317	Aleya Riyaz Tajdin Dhanji
11.	Shares in Nairobi Steam Laundry and Dry Cleaners (11978) Ltd	Aleya Riyaz Tajdin Dhanji

26. The Protestor claims that he is entitled to a share of the properties listed as Numbers 3, 4, 6 and 7 in this proposed mode of distribution.
27. In her second Affidavit dated 12<sup>th</sup> October, 2021 in response to the Protest the Respondent has annexed a copy of the lease in respect of Apartment B4 Tulip Court situated on LR No282234/33. That lease which is dated 4<sup>th</sup> July, 2012 indicates the name of the Deceased Riyaz Tajdin Dhanji as the sole registered owner of the said property.



28. The Respondent has also annexed to her Affidavit in response a copy of a Sale Agreement in respect of Apartment B4 Tulip situated on LR 5980/3 which Agreement names the Deceased as the sole purchaser of the Apartment (Annexure 'ARD 3').
29. Likewise, in her Supplementary Affidavit dated 15<sup>th</sup> September, 2021 the Respondent has annexed a copy of the Title Document in respect of Mansionette No 2 erected on LR No209/8367. The Title Document indicates that this property is also registered solely in the name of the Deceased Riyaz Tajdin Dhanji.
30. In respect of Flat No5 Cedar Spring erected on LR No330/256 Nairobi, the Respondent has annexed to her Affidavit in response dated 9<sup>th</sup> September, 2021 a copy of a lease indicating that the said property is solely owned by the Deceased Riyaz Tajdin Dhanji (Annexure ARD 1).
31. She has also annexed a Certificate of Postal Search dated 9<sup>th</sup> January, 2018 which indicates that the Flat B5 Cedar Springs is registered in the sole name of the Deceased (Annexure 'ARD 1').
32. Annexed to the same Affidavit is a copy of the lease document in respect of Flat 2C Royal Comfort situated on LR No1870/VI/307 which indicates that the property is registered in the sole name of the Deceased. (Annexure 'ARD 2'). Annexure 'ARD 4' is a lease Agreement in respect of the same property in which the name or landlord is indicated as Riyaz Dhanji (the Deceased herein).
33. From the above documentation I am satisfied that the Respondent has proved that the Lavington Valley Apartment E10, Cedar Springs Flat 5B, Royal Comfort and Tulip Court Apartment B4 all belonged exclusively to the Deceased. As such the above properties are available for distribution in terms of the written will dated 21<sup>st</sup> May, 2013.
34. The Protestor has not mounted any challenge to the ownership documents produced by the Respondent. As such this court has no reason to doubt the validity of those ownership documents.
35. The Protestor has attached an undated Sale Agreement in respect of Flat No D9 situated on LR No330/375. (Annexure 'AHK 2') The said Sale Agreement names both the Deceased and the Protestor as purchasers while the vendor is indicated to be Marlborough Properties Limited.
36. Both parties concede that with respect to the property known as Apartment D9 LR No330/375 there are ongoing proceedings in the ELC. Therefore it is prudent to have that property removed from the proposed mode of distribution until the ELC matter is determined.
37. Therefore, I find that the only properties which is not available for distribution under the Grant is this Flat D9.

### **Conclusion**

38. Finally, I find no merit in the Protest dated August 4, 2021. The same is dismissed and this court hereby directs that the summons for confirmation of Grant dated June 6, 2021 be and is hereby allowed as prayed Subject to the removal of the property known as Flat D9 situated on LR No 330/375 from the list of Assets available for distribution.
39. The fate of this Flat D9 will abide the decision of the Environment and Land Court in ELC Suit No 352 of 2021.
40. I direct that each party meet their own costs.

**DATED IN NAIROBI THIS 4<sup>TH</sup> DAY OF AUGUST, 2023.**

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**MAUREEN A. ODERO**  
**JUDGE**

