



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 902 OF 1997

IN THE MATTER OF THE ESTATE OF MALIKIT SINGH alias NARANJAN PURKH MALKIT alias NARANJAN PURKH NAMA HAMIRA MALKIT (DECEASED)

RULING

1. Malikit Singh alias Naranjan Purkh Malkit alias Naranjan Purkh Nama Hamira Malkit died intestate 26 years ago on 26.1.96. The record shows that the deceased was survived by his widow Parsini Naranjan Pukh Nama *alias* Parsini Naranjan Malkit (Parsini) and 4 sons, Ragbir Baden, Balbir Singh (Balbir), Ajit Baden and Manjit Singh Malkit (deceased). A grant of letters of administration was initially issued to Balbir Singh and Parsini on 2.7.97. Following the demise of Parsini on 17.2.13, the Grant was rectified on 3.3.15 by replacing her name with that of Trilochan Baden. The Grant was further rectified on 2.2.16 to include the deceased's aliases.
2. There are 2 applications for consideration in this ruling.
3. In the first application dated 26.8.2020, the Administrators seek the confirmation of the Grant. They proposed that the only asset of the estate being a property known as L. R. No. 209/1904 (the suit property) be distributed to the 4 sons of the deceased in equal shares.
4. Majinder Baden, the widow of Manjit Singh Malkit filed an affidavit of protest dated 8.3.21. She opposed the confirmation of grant on the ground that Balbir was convicted of tax fraud of £270,000 in the United Kingdom and imprisoned. This led to dissolution of Top Gear Motospat Limited, a company in which both administrators were directors. Majinder is therefore apprehensive that the estate will be mismanaged if placed under the administrators. She further stated that based on the tax evasion, the Administrators need to confirm their solvency in line with Rule 29(1) of the Probate and Administration Rules. For the foregoing reasons, Majinder urged the Court not to confirm the Grant and prayed that she and one of the other sons of the deceased be appointed administrators of the estate of the deceased.
5. In his replying affidavit sworn on 4.6.21, Balbir averred that the Administrators have not been able to have the Grant confirmed because of delay on the part of the other beneficiaries' failure to consent to the proposed mode of distribution. Majinder failed to provide to the Administrators details of her late husband's legal representatives in spite of several requests by way of letters. Without proof that she is Manjit's legal representative, she has no legal capacity to represent his estate. Further, the Court file went missing and was only reconstructed on 3.2.21. The Administrators are of the view that the affidavit of protest is intended embarrass the Administrators and to further delay the confirmation of the Grant which delay has resulted in wastage of the estate.
6. Balbir contended that the dissolution of his company, a separate legal entity from himself, does mean he lacks the capacity to administer the estate of the deceased or that he will mismanage the same. He averred that no evidence has been produced to prove that the Administrators have mismanaged or improperly or illegally administered the estate of the deceased. asserts that such dissolution. Balbir further claimed that Majinder intends to delay confirmation of the Grant because the only property of the estate is currently occupied, managed and controlled by herself for her sole benefit to the exclusion of other beneficiaries. Balbir further averred that the file at the Lands Registry in relation to the property was taken by the DCI for investigations. He accused Majinder of refusing to release the original title document of the property to the Administrators thereby making it impossible for them to protect the property from interference by third parties by lodging a caveat.
7. I have considered the Application and the rival affidavits as well as the submissions filed.
8. The Administrators seek confirmation of the Grant which Majinder has opposed by way of her affidavit of protest. The Administrators have challenged her legal capacity to represent the estate of her husband. To buttress their contention, the Administrators relied on the case of In re Estate of Giovanni Forino (Deceased) [2021] eKLR, where Nyakundi, J stated:

It is trite that a litigant has to show some legal right or recognize interest at stake. The right or interest may be direct or possibly indirect or personal. A party seeking a remedy in intestate proceedings could not succeed in being heard unless the criteria of appointment of a legal representative with specific instrument authorizing him or her to administer the estate of the deceased has been issued by the Court of law. At best the litigant could be described as being populist on the issues of the relief requested with no legal representative commissioned by the Court capable of being sued or capacity to sue on behalf of the estate.

9. Rule 40(6) of the Probate and Administration Rules provides:

Any person wishing to object to the proposed confirmation of a grant shall file in the cause in duplicate at the principal registry an affidavit of protest in Form 10 against such confirmation stating the grounds of his objection.

10. A person seeking to object to confirmation of a grant is required to file an affidavit of protest. Such person need not apply for and obtain a grant for this purpose. The case of Giovanni Forino (supra) is therefore not relevant in the circumstances herein.

11. It is not disputed that Majinder is the widow of Manjit. Under Part V of the Law of Succession Act, a widow is entitled to the estate of her deceased husband. Given that Manjit, though deceased, was entitled to the estate of the deceased as one of the sons of the deceased, Majinder is by extension entitled to Manjit's share in the estate of the deceased. Accordingly, Majinder has the necessary *locus standi* to file any application and affidavit of protest in this cause.

12. An affidavit of protest filed in opposition to a proposed confirmation presupposes objection to the proposed mode of distribution. A protestor would ordinarily file his own mode of distribution for consideration by the Court. In the present case however, Majinder does not appear to oppose the mode of distribution. Her objection relates to the suitability of the Administrators to administer the estate in view of the fact that their company Top Gear Motospat Limited had been dissolved. The Court notes that the Grant was issued to the Administrators as far back as 3.12.15, while their company had been dissolved 6 years earlier in 2009. Majinder has not demonstrated to the Court that she opposed the appointment of the Administrators and did not appear to have any problem with their appointment until 2021 when they filed the summons for confirmation of grant dated 26.8.2020. In any event, no evidence of mismanagement of the estate of the deceased by the Administrators has been placed before me.

13. Where a party objects to appointment of administrators, and seeks, as Majinder does, appointment as administrator in place of the appointed administrators, such party ought to first seek revocation of the issued grant. Accordingly, I find that Majinder ought to have moved the Court by way of a summons for revocation of grant and not affidavit of protest. Majinder relied on the case of Re Estate of the Late Havaton Kavava Maingi [2019] eKLR in which the Court stated that it should be guided by Section 66 of the LSA in determining who should be appointed administrators to replace dead ones. The Court notes that in that case, the Court was dealing with an issue of replacing deceased administrator. In the present case, the administrators are alive. But as indicated herein, in her quest to be appointed administrator in place of the present administrators, Majinder ought to have first sought the revocation of the present Grant, which she has not.

14. Section 38 of the Law of Succession Act provides for distribution of the estate of a deceased intestate who is survived by children but no spouse as follows:

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

15. Although the deceased was survived by his widow and his 4 sons. His widow died on 17.2.13, before confirmation of the Grant. Manjit died earlier on 6.7.12. In their summons for confirmation, the Administrators have proposed that the estate be distributed to the 3 surviving sons and the estate of Manjit in equal shares. This is in line with Section 38 of the Act. Given that Majinder has not opposed the distribution, I find and hold that her affidavit of protest lacks merit.

16. I now turn to the second application. It is dated 26.4.21, and the Administrators seek orders that:

1. Spent

2. This Honourable Court do direct the Lands Registrar in Nairobi to gather all the records/registers/folders/copies of titles/parcel files and all other documents relating to the property registered as Land Reference Number 209/1904, Nairobi and deliver them to the Deputy Registrar of the High Court of Kenya Nairobi forthwith, to be kept and maintained in such secure custody as the Honourable Court may direct.

3. In the alternative, this Honourable Court do direct the Lands Registrar in Nairobi to keep and maintain the records/registers/folders/copies of titles/parcel files and all other documents relating to the property registered as Land Reference Number 209/1904, Nairobi in such secure custody as the Honourable Court may deem fit

4. Costs of this Application be provided for.

17. The reasons proffered by the Administrators for seeking the orders are that their attempts to have the Grant confirmed have been hampered by the disappearance of the Court file. The file has since been reconstructed. The Administrators believe that the disappearance of the Court file has been caused by parties connected to some beneficiaries of the estate of the deceased. They are therefore apprehensive that the same parties will interfere with the records at the Lands office relating to the suit property, which is occupied by Majinder. She is also in possession of the original title to the suit property despite being aware that there are administrators of the estate.

18. Majinder swore a replying affidavit on 29.6.21 in response to the Application which she termed malicious, baseless and in bad faith. She denied having caused the disappearance of the Court file. She is also keen on progressing the matter but has no faith in the Administrators. She further averred that the Court lacks the jurisdiction and capacity to store and hold Land Registry files and further that Lands records are now digitised and there is no reason for the physical file to be transferred as the records are secured online.

19. I have considered the Application and the rival affidavits and submissions. The Administrator's state that they are apprehensive that the same persons who caused the disappearance of the Court file are likely to interfere with the records at the Lands Registry relating to the suit property. The Administrators have not stated who these persons are, nor have they produced any evidence to support their allegations that these persons are responsible for the disappearance of the Court file. I therefore find and hold that the Application is speculative and the

Court cannot act on mere speculation.

20. Further even if the Court were satisfied with the grounds advanced, the prayers sought would still not be granted. Section 7 of the Land Registration Act provides:

(1) *There shall be maintained, in each registration unit, a land registry in which there shall be kept—*

- (a) *a land register, in the form to be determined by the Cabinet Secretary;*
- (b) *the cadastral map;*
- (c) *parcel files containing the instruments and documents that support subsisting entries in the land register.*
- (d) *any plans which shall, after a date appointed by the Cabinet Secretary, be geo-referenced;*
- (e) *the presentation book, in which shall be kept a record of all applications numbered consecutively in the order in which they are presented to the registry;*
- (f) *an index, in alphabetical order, of the names of the proprietors; and*
- (g) *a register and a file of powers of attorney.*

21. The records which the Administrators seek to be delivered up to the Deputy Registrar of this Court are to be kept in the Nairobi Land Registry by law. Further, such records are public documents and the Nairobi Lands Registrar has the statutory responsibility to administer the registry in the custody of which, such records are kept. This responsibility is stipulated in Section 14(4) of the Act as follows:

The County Land Registrar shall be responsible for administering the registries within the respective county and in the implementation of policies, guidelines and strategies in accordance with this Act.

22. In view of the statutory requirements set out in the Act, the orders sought by the Administrators cannot be granted. The Court cannot usurp the role of the Lands Registrar and arrogate to itself the duty of holding in its custody, documents that are to be held by another public body.

23. In the end, I make the following orders which are necessary for the ends of justice:

- i) The affidavit of protest dated 8.3.21 is hereby dismissed.
- ii) The summons for confirmation of grant dated 26.8.2020 is hereby allowed. The estate of the deceased shall be distributed to Ragbir Baden, Balbir Singh, Ajit Baden and estate of Manjit Singh Malkit (deceased) in equal shares.
- iii) The Application dated 26.4.21 is hereby dismissed.
- iv) Each party shall bear own costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 28TH DAY OF JANUARY 2022.

M. THANDE

JUDGE

IN THE PRESENCE OF: -

..... **FOR THE ADMINISTRATORS**

..... **FOR THE PROTESTOR**

.....**COURT ASSISTANT**