



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 230 OF 2020

IN THE MATTER OF THE ESTATE OF BHACHU KARTAR SINGH (DECEASED)

MANJIT KAUR REHAL.....APPLICANT

VERSUS

BALRAJ SINGH BHACHU.....RESPONDENT

RULING

1. The deceased Bhachu Kartar Singh died on 18th December 2019 in Nairobi. He left three children:-

- (a) Manjit Kaur Rehal (daughter/applicant);
- (b) Jugdeep Kaur Kalsi (daughter); and
- (c) Balraj Singh Bhachu (son/respondent).

He was predeceased by a daughter Sukhbir Kaur Birdi who left a daughter Sandeep Kaur Kalsi and a son Nick-raj Singh Birdi.

2. The deceased's estate comprised the following assets, with no liabilities:

- a) LR No. 12565/5;
- b) vehicle KAK 029B;
- c) Apartment No. 101 (Dhanjay Apartments) on LR No. 330/797 Nairobi; and
- d) two bank accounts at Bank of Baroda and safe deposit account at the same Bank.

The total estimated value of the assets was Kshs.50,000,000/=.

3. The respondent filed a petition on 5th March 2020 seeking a grant of probate of oral Will. He stated that before the deceased died, he had on 16th November 2019 left an oral Will in which he had appointed him as the executor and had bequeathed the entire estate to him. The deceased had allegedly stated that he had given enough gifts to his daughters at the time each was wedding. The witnesses to the oral Will were Mohinder Singh Matharu and Swarn Kaur Matharu. They are the father-in-law and mother-in-law, respectively, of the respondent.

4. When the petition was gazetted on 15th May 2020 it indicated that the deceased had left a written Will. On 1st July 2020 this court issued a grant of probate with written Will.

5. The present application dated 9th June 2021 sought the revocation and/or annulment of the grant. The applicant stated that the proceedings leading to the grant were fatally defective, as the grant referred to a written Will whereas the respondent alleged that the deceased left an oral Will. The grant was defective because the gazette notice issued referred to the deceased having left a written Will. The second complaint was that the said oral Will was void on the following grounds:-

- (a) the witnesses to the Will were the respondent's father-in-law and mother-in-law who were not independent witnesses;
- (b) there was no evidence that the witnesses were invited for the purpose of making the Will.
- (c) there was no evidence that the deceased intended to make an oral Will;
- (d) there was no certainty as to the intention of the deceased to bequeath the executor as the sole beneficiary of the estate;
- (e) the words uttered in the said Will were ambiguous;
- (f) the oral Will had not provided for the deceased's other children; and
- (g) there was no authenticated translation of the Will document in Punjabi annexed as "c" to the respondent's affidavit.

6. The respondent opposed the application saying that the applicant had not pointed to any defect in the oral Will. His case was that the oral Will met all the legal requirements and represented the deceased's testamentary wishes and bequest. As for the defects in the notice and the grant, he blamed the Government Printer and the Court for the same and indicated that he would seek their correction.

7. Without having to deal with the question whether or not the deceased left a valid oral Will, it is clear that the gazette notice that went out to the public indicated the deceased had left a written Will, which was not the case. The petition stated that the deceased had left an oral Will. The notice was not the valid notice that ought to have been gazetted. Following that invalid notice, the grant of probate with written Will was issued. The valid grant that ought to have been issued was a grant of probate with oral Will. The result was that an invalid gazette notice was issued by the Government Printer, and an invalid grant was issued by the Court. Both were null and void. For all purposes and intent, the petition was not gazetted and no grant was issued.

8. Under **section 76** of the **Law of Succession Act (Cap. 160)**, I nullify the grant that was issued in respect of the estate of the deceased on 1st July 2020. Under **section 47** of the **Act** and **rule 73** of the **Probate and Administration Rules**, I direct that the petition filed by the respondent on 5th March 2020 be gazetted afresh. Upon gazettment the applicant, or any other interested party, will be at liberty to object to the grant, challenge the validity of the oral Will or cross-petition for a grant, whatever they will choose. Subsequent to that, the matter shall be mentioned on **14th June 2021** for directions on hearing.

9. Given that this is a family dispute, and given what happened to the petition, I make no orders as to costs.

DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 19TH DAY OF JANUARY 2022.

A.O. MUCHELULE

JUDGE