



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 106 OF 2017

IN THE MATTER OF THE ESTATE OF SUKHVINDER SING BALWAT SING DHILLON (DECEASED)

HARJEET KAUR SUKHVINDER SINGH DHILLON....1ST APPLICANT

BHUPINDER KAUR DHILLON.....2ND APPLICANT

VERSUS

LILIAN SETU.....RESPONDENT

RULING

1. The deceased Sukhvinder Singh Balwat Sing Dhillon died intestate on 14th August 2016. He was survived by his widow Harjeet Kaur Sukhvinder Singh Dhillon (1st applicant), son Karandeep Singh Dhillon and daughter Bhupinder Kaur Dhillon (2nd applicant). On 4th May 2017 Karandeep Singh Dhillon petitioned this court for the grant of letters of administration intestate. The mother and sister provided their consent. The estate comprised a parcel of land Cismara/Lmek/2869 and many motor vehicles (mainly trailers and prime movers). The value of the estate was estimated to be Kshs.600,000,000/=. His liabilities were estimated to be Kshs.101,970,260/73. The grant was issued on 25th July 2017, and confirmed on 10th July 2018. The properties were ordered to be owned jointly by these beneficiaries.
2. It is not disputed that Karandeep Singh Dhillon died on 15th February 2020. The present application dated 29th September 2020 by the applicants sought the revocation and novation of the grant as confirmed on account of the death of the administrator, and in his place the applicants be appointed the new administrators. It was indicated that because of the death of the administrator the grant had become inoperative. Upon issuing a grant to the applicants, they asked that a certificate of confirmation should issue to them.
3. The respondent Lilian Setu opposed the application. Her case was that she was the deceased's daughter, born out of wedlock, and was seeking for a reasonable share of the estate of the deceased. She and her mother Alice Kashu each filed a replying affidavit in opposition. Alice Kashu stated that sometime in 1984 she had a relationship with the deceased. The result was the birth of the respondent on 22nd August 1985. Although the respondent was not substantially opposed to the applicants taking over the estate as administratrices, she stated that her interest was reasonable provision for her and her two children. She also claimed that the procedure adopted to seek revocation and novation was wrong in law.
4. The respondent had on 17th August 2020 filed a caveat through her advocates Sam Ngeru & Co. Advocates. In the instant application, the applicants sought that the caveat be struck out.
5. The respondent had, following the deceased's death, filed a **Citation No. 88 of 2018** against the applicants through her then advocates Onyango Kwame Nkrumah. She was not aware that by the time the late administrator had obtained a grant. When her advocate died she did not pursue the matter. She had not objected to the grant. The applicants stated that they were not aware of the citation.
6. It is evident that, following the death of the administrator of the estate of the deceased, the grant issued to him on 25th July 2017 and confirmed on 10th July 2018 has become useless and inoperative under **section 76(e)** of the **Law of Succession Act (Cap. 160)** and **rule 44** of the **Probate and Administration Rules (In the Matter of the Estate of Mwangi Mugwe alias Ngware [2003]eKLR)**. For the administration of the estate of the deceased to proceed, the grant has to be revoked and the certificate of confirmation set aside. Otherwise the estate of the deceased will be left without an administrator, and will be open to waste and intermeddling.
7. The respondent did not, on time or at all, object to the grant being issued to the late administrator of the estate of the deceased. The present

caveat does not amount to an objection. Her caveat and response to this application do not amount to an application for reasonable provision under **sections 26, 27, 28 and 29** of the **Act**. In any case, on the day she will seek to proceed against the estate for provision, she will require the estate to have administrators against whom to proceed.

8. For clarity, a caveat under **rule 15(1) and (2)** of the **Probate and Administration Rules** is by any person who wishes to ensure that he shall receive notice of any application for the making or the confirming of a grant of representation. The stage for such a caveat passed when the grant was issued and confirmed to the late Karandeep Singh Dhillon.

9. In conclusion, after considering the application dated 29th September 2020, the responses and the written submissions, I find it merited. I allow it. I revoke the grant in respect of the deceased Sukhvinder Singh Balwat Sing Dhillon that was issued to Karandeep Singh Dhillon on 25th July 2017 and order that the certificate of confirmation issued on 10th July 2018 be set aside. A fresh joint grant and certificate of confirmation shall issue to Harjeet Kaur Sukhvinder Singh Dhillon and Bhupinder Kaur Dhillon. The caveat filed by the respondent Lilian Setu on 17th August 2020 was incompetent and is struck out.

10. Given the facts of the case, I make no order as to costs.

DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 18TH DAY OF JANUARY 2022

A.O. MUCHELULE

JUDGE