



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Nataverbhai Prabhudas Vallabh Patel (Succession Cause
3097 of 2011) [2022] KEHC 14204 (KLR) (Civ) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14204 (KLR)

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

CIVIL

SUCCESSION CAUSE 3097 OF 2011

AO MUCHELULE, J

OCTOBER 26, 2022

BETWEEN

SHAILESHKUMAR NATAVERBHAJI PATEL APPLICANT

AND

SHILPAN PATEL RESPONDENT

RULING

1. The deceased Nataverbhai Prabhudas Vallabh Patel died testate on 25th May 2015. He left a written Will dated 6th July 2013 in which he bequeathed his properties LR o. 15005/33 (formerly LR No. 15005/5/ (IR No. 68597/1) located in Spring Valley in Nairobi and LR No. 31270/1 (Original LR No. 190) next to Vel Lab in lower Kabete in Nairobi to his grandchildren. The executor of the Will was his son-in-law Philpan Patel (the respondent). The grant of probate was issued on 24th March 2015, and confirmed on 22nd February 2016.
2. The applicant Shailesh Kumar Nataverbhai Patel is a son of the deceased. In the application dated 30th January 2018 he sought the resolution of the grant as confirmed on the basis that the was not made aware of the Will and the proceedings leading to the grant; that he only became aware of the Will and the proceedings when the respondent served him with the proceedings in ELC No. 721 of 2017 at Nairobi in which he, his wife Devika Shaileshkumar Patel and son Phanil Viraj Patel had been sued along with the Chief Land Registrar over the Spring Valley property; and, lastly, that the property did not belong to the deceased at the time of the death, but belonged to Devika Shaileshkumar Patel (the applicant's wife) in trust for him and their son Shanil Viraj Patel. The ELC suit was brought to declare that the said registration was illegal, null and void as the property belonged to the deceased. It was sought that the entries in the register be cancelled for the parcel to revert to the deceased.



3. In the instant application the applicant's case was that the property did not belong to the deceased and therefore ought not to have been the subject of Will or the testate proceedings, and grant. He further stated that the respondent had always known about his interest in this two but had not brought it up when seeking the grant and its confirmation.
4. The respondent opposed the application through his replying affidavit dated 5th July 2018 in which he reiterated that the property belonged to the deceased and he had bequeathed it in his Will that was the subject of the grant and certificate of confirmation. He stated that the applicant and his wife stay on the property, and that he was the one in possession of the title documents but could not avail it when requested for the implementation of the certificate of confirmation. He was later surprised to find that the property had been transferred into other names of the applicant's wife to hold in trust for the applicant and his son. This is when he filed the ELC case against the applicant and his family.
5. It is clear to me that before the ELC Court there is a dispute between the respondent, as the executor of the deceased's Will, and the applicant and his family regarding that ownership of LR No. 15005/5 (IR No. 68597/1) located in Spring Valley; the dispute being whether, at the time of his death, the deceased owned the parcel or he had caused its transfer to the applicant's wife.
6. If the ELC Court determines that the property belonged to the deceased, the same will be the subject of disposition in accordance with his Will. If it decides that the parcel property belongs to the applicant's wife, then it will not be free property of the deceased to be given to the deceased's beneficiaries through these testate proceedings.
7. Accordingly, under section 47 of the *Law of Succession Act* (Cap. 160) and rule 73 of the *Probate and Administration Rules*, I stay these proceedings to allow the ELC Court determine the question of LR No. 15005/5 (IR No. 68597/1).
8. Costs shall abide the cause.

DATED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 26TH DAY OF OCTOBER 2022

A.O. MUCHELULE

JUDGE

