



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Daniel Bernhard Hefti (Deceased) (Succession Cause
47 of 2008) [2022] KEHC 15881 (KLR) (23 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15881 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 47 OF 2008**

JN ONYIEGO, J

NOVEMBER 23, 2022

IN THE MATTER OF THE ESTATE OF DANIEL BERNHARD HEFTI (DECEASED)

BETWEEN

DANIEL BERNARD REINHARD 1ST APPLICANT

ELISBETH HEFTI REINHARD 2ND APPLICANT

AND

**JOYCE REINHARD ALIAS JOYCE JEPLETING REINHARD INTERESTED
PARTY/RESPONDENT**

AND

DAMARIS NTHENYA 1ST RESPONDENT

MAURISIO MARINO 2ND RESPONDENT

ALFRED KELLER 3RD RESPONDENT

RULING

1. The proceedings herein relate to the estate of Daniel Bernard hefti (hereafter the deceased) who died on the February 27, 1999 while domiciled in Watamu Kenya. On October 3, 2008, Elizabeth Hefti Reinhard and Daniel Bernard Reinhard describing themselves as daughter and grandson to the deceased respectively, petitioned for a grant of letters of administration intestate vide Malindi high court succession cause number 47 of 2008. The same was granted on November 25, 2008 and subsequently confirmed on June 18, 2009. The estate comprising of plots number 588, 589 and 654 Watamu CR 30959, 30960 and 30961 respectively was shared out equally between the two petitioners.
2. Subsequently, the property changed hands to Joyce Jepleting who claimed to have been a former wife to the 2nd administrator. That the change of ownership led to other parties claiming ownership as well



thus attracting a series of suits in other courts including Malindi ELC Case No 75 of 2019 and Malindi Civil Suit No 108 of 2012. Besides, various interested parties also claiming beneficial interest in the estate sought to be enjoined as beneficiaries in this case.

3. Among those claiming ownership are; Maurizio Marino and Amici Miei Limited who filed an application dated September 27, 2019 seeking to revoke the grant on grounds that the grant herein was obtained by one Joyce Jepleting without the knowledge of the administrators. That Joyce forged the signatures of the administrators of the estate hence obtained the grant fraudulently and therefore the subsequent transfer of the properties into her name was illegal null and void. Equally, Damaris Nthenya also claiming beneficial interest on the estate as the adopted child of the deceased filed her application for revocation of the grant dated June 18, 2019.
4. On September 30, 2019, the court made directions for hearing of the revocation applications to proceed *viva-voce* on October 15, 2019. Subsequently, hearing commenced on November 13, 2019. After taking three witnesses, some parties applied for recusal of the judge on grounds of bias. The honourable judge referred the matter to the principle judge Nairobi who referred the matter to Mombasa High court for hearing. When the file landed Mombasa, it was given a new number now Mombasa Succession Case Number 26 of 2020.
5. In the course of the hearing, Mr Kinyua appearing for Marino and Amici informed the court that he was aware that the deceased had executed a will hence the intestate grant ought to be revoked. Counsel urged the court to allow adduction of evidence to prove the existence of the said will. Mr Kithi for the petitioners confirmed that indeed the deceased had left a will and that his only concern was the privacy of his clients as some of the content in the will is confidential.
6. The petitioners having conceded that the will was in existence, they agreed on evidence to be tendered to prove its content. Mr Kithi for the petitioners was then allowed to file a supplementary affidavit to introduce the will which in any event Mr Kinyua had already alluded to. On that ground, hearing was rescheduled for November 3, 2021. On 3rd November, Mr Kithi confirmed filing a supplementary affidavit as directed and sought for time to possibly record a consent. On the basis of Kithi's admission that the deceased left a will, Mr Kinyua demanded for immediate revocation of the will. Mr Birir holding brief for Songok for Joyce sought for the will to be served upon him before making a comment. The matter was then rescheduled to November 16, 2021 for parties to agree on whether to revoke the grant or not.
7. During the intervening period, Mr Songok appearing for an interested party one Joyce filed a notice of motion dated November 8, 2021 seeking that the Hon Court does stay the proceedings herein pending hearing and determination of the application herein; the court to strike and expunge out the administrators' documents dated November 2, 2021 for being filed without leave of the court; the court to order DCI to investigate and prepare a report in respect of the will dated April 24, 1997 and all documents filed with the will. The application is premised on the grounds set out on the face of it and an affidavit sworn on November 10, 2021 by Mr Songok counsel for the applicant thus submitting that; the applicant and other parties having closed their respective cases will be prejudiced by the introduction of the will and other documents at this stage and that the applicant will suffer substantial loss if the order sought in the application is not granted.
8. In response, Mr Kithi counsel for the administrators filed grounds of opposition stating that the interested party who was given a power of attorney by the administrators to act for them in these proceedings cannot turn round and oppose the donor's authority. That the will is in existence and that it was the executor who gave authority to the administrators to appoint the interested party as donee hence cannot turn around and oppose the power which appointed her as his or her representative.



9. Mr Kinyua who also swore a replying affidavit on January 31, 2022 on behalf of his clients opposed the application stating that Joyce was dishonest in opposing production of the will which the administrators who gave her authority to represent them are willing and ready to produce. That the court having directed for the will to be produced in the presence of all parties cannot be asked again to change its orders for no apparent reason. On the question of investigation of the will, counsel averred that Joyce and the administrators should be investigated for obtaining a grant fraudulently without disclosing of the existence of the will. Mr Kinyua prayed for an order revoking the intestate grant and the estate to revert back to its original status.
10. In response to Mr Kinyua's replying affidavit, Mr Moses Kiprugut Rop also claiming to be representing Joyce swore an affidavit on February 22, 2022 thus stating that Joyce is not dishonest as kinyua's clients were mere tenants in the properties of the deceased; that Mr Kinyua is not a litigant capable of swearing an affidavit; Mr Kinyua has gone to the merits of the case and that the application should be allowed. Mr Rop also opposed Mr Kithi's preliminary objection through his replying affidavit sworn on February 23, 2022 thus stating that the preliminary objection does not meet the threshold set out in the case of *Owners of Motor Vessel Lilian "S" vs Caltex Oil* (1989) e KLR.
11. When the application came for directions, parties agreed to dispose the same by way of written submissions. Consequently, the interested party (Joyce) filed her submissions through the firm of Songok and company advocates dated February 22, 2022 thus adopting the content of the application and the affidavit and further affidavit in support of the application. Counsel submitted that it was late in the day for the purported will to be introduced after the case has been heard substantively hence an afterthought
12. On the other hand, Mr Kinyua appearing for Mr Marino and Amici filed his submissions on March 14, 2022 basically adopting his affidavit in reply to the application. The rest of the parties did not file their submissions.
13. I have considered the application herein, affidavit in support, response thereto and submissions by some of the interested parties. This court has been asked to; stay these proceedings pending hearing and determination of this application; expunge documents filed by the administrators through a supplementary affidavit and order for investigation on the aforesaid will. It is worth noting that the prayer for stay of proceedings is spent as the application has been heard and is being determined in this ruling. Regarding expunging the supplementary affidavit filed on November 2, 2021, the same was pursuant to a court order made on September 29, 2021 in the presence of all parties. Any party who was not happy should have challenged the direction either through appeal or review. In the circumstances, I do agree with Mr Kinyua that there was no further leave required as the documents in question which includes a will in a foreign language and its translation are properly before the court.
14. The applicant raised the issue of inordinate delay in introducing the will as a ground to reject it. I do not see any prejudice in introducing the will at this stage because the applicant one Joyce should be concerned that the administrators on whose power of attorney she came into these proceedings did not disclose of its existence in time. If anything, she should be telling the court why she or her principals did not disclose that fact in time. Since the administrators have owned up that there is a valid will executed with their dad and grandfather respectively, the applicant will have an opportunity to cross examine them and if need be, she can recall her witnesses to rebut or controvert the administrator's evidence. Ordinarily, it is the same Joyce claiming to be a daughter-in-law being a wife to the 2nd administrator who should be pulling towards the same direction in support of her former husband.
15. Regarding an order for criminal investigation over the will's existence, the applicant did not specify the actual act of criminality associated with the will. She does not challenge the validity of the will which



will then require full hearing to disprove or prove it. The orders sought are lacking in specificity hence not tenable. After all, the applicant has a chance to question it in evidence if found necessary in view of the administrators' indication of their willingness to consider revocation of the grant which they have alleged to have obtained illegally. They have even indicated that they have already filed a testate succession case in respect of the same estate in Malindi high court. In a nutshell, I do not find any merit in the application herein hence the same is dismissed with no order as to costs.

16. Before I pen off, I wish to advise counsel in this matter to completely cease from litigating on behalf of their parties by swearing affidavits which ordinarily should be sworn by their clients. In particular, Mr Kinyua and Rop must stop from swearing affidavits on behalf of their litigants touching on factual issues within their client's knowledge. Mr Kithi for the administrators to indicate to the court whether they have conceded to the revocation applications in view of their admission that there was a will which is not disputed by them and therefore cannot be ignored. Mention on November 30, 2022 for further directions. Parties are still at liberty to record their consent in default hearing to proceed from where it had reached.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 23RD DAY OF NOVEMBER, 2022

J.N.ONYIEGO

JUDGE

