



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 3378 OF 2007

IN THE MATTER OF THE ESTATE OF MANJULABEN ARVINDBHAI PATEL (DECEASED)

PARITABEN JITENDRA DEDHIA.....APPLICANT

VERSUS

ARVINDBHAI HARMANDBHAI PATEL.....1ST RESPONDENT

ATUL ARVINDBHAI PATE.....2ND RESPONDENT

BHATI PATEL.....3RD RESPONDENT

AND

AMARJIT CHETAN PUTRA.....1ST INTERESTED PARTY

ANIL JOSHI.....2ND INTERESTED PARTY

RULING

1. The deceased Manjulaben Arvindbhai Patel died intestate on 14th October 2007. She left a widower Arvindbhai Harmanbhai Patel (1st respondent); sons Pankaj Arvindbhai Patel, Jyotin Arvindbhai Patel, Atul Arvindbhai Patel (2nd respondent); and daughter Paritaben Aben Jitendra Dedhia (the applicant). The estate of the deceased comprised ½ share in L.R. No. 18701/1/503, Account No. 000xxxxxx in Bank of Baroda Sarit Center and Account No. 132xxxxxxxxx in Fina Bank Westlands Branch.
2. On 14th December 2007 the 1st respondent petitioned for the grant of letters of administration. The petition was supported by all the beneficiaries. The grant was issued to him on 6th May 2008. The same has not been confirmed.
3. It does not appear to be in dispute that the deceased's ½ share in LR No. 1870/1/503 was in the meantime transferred by the 1st respondent to the 2nd respondent as a gift, and the 2nd respondent sold the same to the 1st interested party Amarjit Chetan Putra.
4. On 29th September 2011 the applicant filed an application to revoke the grant on the basis that the 1st respondent had misappropriated the estate by allowing the 2nd respondent to sell the property in question. She sought that the transfer and/or charge of the property to third parties be prevented. On 3rd October the applicant filed application to amend the summons for revocation. The instant application dated 13th November 2019 and filed on 29th November 2021 sought to further amend the summons for revocation of the grant. The amendment sought to include in the prayers a declaration that the transfer of LR No. 1870/1/503 to the 1st interested party amounted to intermeddling with the estate of the deceased. It was sought that the transfer be cancelled. The other prayer was that the 2nd respondent be committed to jail for a period not exceeding one year or be ordered to pay a fine not exceeding Kshs.10,000/=, or to be jailed and pay the fine for intermeddling.
5. The respondents opposed the instant application through grounds of opposition. They stated that the proposed amendment was not necessary for the determination of the real issues in question; the proposed amendment sought to introduce prayers that could not be granted

in the interlocutory application; and that the amendment will cloud the issues for determination between the parties, and will fly in the face of affidavit evidence before the court. The 1st interested party filed grounds of opposition to state that the applicant had not outlined any malfeasance occasioned by him, and that there was no joinder of issues between him and the applicant. His case was that he was a third party buyer for value without notice and therefore his title could not be impeached.

6. Mr. Metto for the applicant filed written submission on the application for amendment. I have read and considered the same.

7. The substantive question before the court is whether or not the grant that was issued to the 1st respondent on 6th May 2008 should be revoked. The applicant's case is that, before the grant was confirmed, the 1st respondent transferred the deceased's property in LR No. 1870/1/503 to the 2nd respondent who sold it to the 1st interested party. In seeking to amend the application for revocation, the applicant stated that she sought to bring to the fore facts that had emerged since her initial application and to introduce prayers to meet those new facts. She stated that, this way, her whole case will be before the court for determination.

8. At this stage of the application to amend the summons the court is not required to deal with the merits of the case of either side. Indeed, the **Court of Appeal in Coffee Board of Kenya –v- Thika Coffee Mills Ltd & 2 Others [2014]eKLR** quoted with approval **Halsbury's Laws of England, 4th Ed (Re-Issue), Vol. 36 (1) at paragraph 76** as follows:-

“On an interlocutory application for leave to amend, the court should rarely seek to evaluate the strength of the case sought to be argued, as to do so would anticipate the trial of issues.”

10. So that, whether or not the 1st interested party has a good title which cannot be questioned is a matter to be determined during the main application for revocation. As for the objection by the respondents, it is clear to me that the court should deal at once with the whole question whether the 1st respondent, as the administrator of the estate of the deceased, had power to transfer deceased's property to the 2nd respondent, and whether the 2nd respondent had power to sell the property of the estate to the 1st interested party.

11. The legal principles governing amendment of pleadings are now settled. As was observed in the case of **Ochieng and Others –v- First National Bank of Chicago, Civil Appeal No. 147 of 1991**, the court should allow amendment if doing so will enable it to deal with and determine the true and substantive merits of the case. The power to amend can be exercised at any stage of the proceedings, and the application should be brought in good faith.

12. In **Eastern Bakery –v- Castelino [1958] E.A 461 (U)** at page 462, it was held that:-

“It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs.”

Further, the sought amendment should not substantially change the character of the dispute in question. Lastly, any amendment to pleadings should be in such manner and on such terms as may be just to the parties given the circumstance of the case.

13. There has been no plea or demonstration that either the respondents or the interested parties will suffer any injustice or prejudice if the sought amendment is allowed. In my estimation, the amendment sought will enable this court to hear and determine all the real and substantive issues between the parties in the dispute.

14. Consequently, I allow the application dated 13th November 2019 by the applicant. Upon the payment of the requisite fees, the annexed **“Further Amended Summons for Revocation of Grant”** dated 13th November 2019 shall be deemed to be properly filed and served. The respondents and interested parties shall have 14 days to formally respond to it, and the applicant shall have 7 days leave upon service with the response to file and serve any further affidavit.

15. The matter shall be mentioned on **28th June 2021** for directions.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF APRIL 2021.

A.O. MUCHELULE

JUDGE