



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1972 OF 2016 (OS)

IN THE MATTER OF THE ESTATE OF BHUPINDER KAUR VIRDI (DECEASED)

SHEETAL VIRDY.....APPLICANT

VERSUS

LAKHVINDER KAUR VIRDY.....RESPONDENT

RULING

1. When on 20th December 2016 the respondent Lakhvinder Kaur Virdy petitioned for the grant of letters of administration intestate in respect of this estate of her late mother Bhupinder Kaur Virdy, she swore that the estate of the deceased included LR No. 1870/IV/137 - Nairobi and LR No. 1870/X/97 – Nairobi. The same was the position on 1st November 2017 when she swore the affidavit in support of the summons for the confirmation of the grant that had been issued to her on 4th April 2017. In the application for the confirmation of the grant, her brother Harcham Singh Virdy and sisters Arvinder Virdi and Manjeet Kaur Virdy had supported her request that the entire estate devolves to her. The estate included a vehicle, a safe at ABC Bank and accounts at ABC Bank, Paramount Bank and Commercial Bank of Africa. The grant was confirmed to her. It is not in dispute that in respect of LR No. 1870/IV/137 – Nairobi the estate of the deceased comprised Flat No. B7 and in LR No. 1870/X/97 – Nairobi the estate comprised House No. 4.

2. The applicant Sheetal Virdy is the respondent’s niece. She is the daughter of the respondent’s late sister Davinder Kaur Virdy. Following application, on 28th September 2020 this court found that the respondent had petitioned for the grant, and the grant confirmed, without reference to the applicant and without her consent, and therefore she had been denied part of the estate that was due to her late mother to which she was entitled. The court found that she was entitled to 1/5 of the estate of the deceased. The certificate of confirmation was ordered amended to reflect that entitlement.

3. The present application was dated 1st December 2020 by the applicant. She sought the following prayers: -

“1. That this application be certified as urgent and service be dispensed with and heard in the first instance.

2. That pending the hearing of this application *interpartes*, the Honourable Court be pleased to issue a mandatory order that the administrator to forthwith make payment of Kshs.2,563,927.20/= to the applicant being the amount of money admitted by the Respondent as available for distribution to the applicant pending hearing hereof and/audit of the estate/or further orders of the court.

3. That the Honourable Court be pleased to appoint the audit firm of Baker Tilly Meralli’s to undertake an audit of the estate and receive all the accounts from the Respondent of the properties and income of the estate since the demise of the deceased.

4. That all the parties and of whatever nature that have handled the estate do submit accounts to the court appointed auditor.

5. That the Honourable Court be pleased to cancel the entries made in favour of the administrator/respondent on the titles for properties L.R. No 180/x /97 Nairobi and Flat Number B7 located in L.R. No. 1870/IV/137 Nairobi and order the Registrar of Lands to revert it into the name of the deceased;

6. That the respondent, whether by herself, her agents, servants, employees and/or any party of whatever nature be restrained by a temporary order of injunction from transferring, selling, administering, alienating any of the assets forming part of the estate of Bhupinder Kaur Viridi (the Deceased) especially L.R No 180/X/97 Nairobi and Flat Number B7 located in L.R. No. 1870/IV/137 Nairobi pending further orders of this court.

7. That costs of the application.

8. That the court grant any other or further orders that my favour the cause of justice.”

4. The application followed the consent entered into on 29th October 2019 by the parties in the following terms:-

“By consent:-

(a) The Administrator to file and serve an inventory of all assets and liabilities from the time of filing of the succession cause to date.

(b) By consent the Protester to get a fifth of the net assets.

(c) The Administrator to render account of the assets of the estate from the time of filing of the succession to date.

(d) Mention to confirm compliance on 10th December 2020.”

5. The substance of the applicant’s complaint was that the respondent was unwilling to have her get 1/5 of the estate of the deceased; she had transferred the estate houses to herself; she had failed to indicate how she had spent the money in the accounts; and was forcing her to accept Kshs.2,563,927/20 in full settlement.

6. The respondent opposed the application. Her case was that she had on 5th November 2019 filed a full and accurate inventory and account of the estate of the deceased and her dealings with it and that by the inventory and account the applicant was going to receive her 1/5 share. She stated that the house on LR No. 1870/10/137 Nairobi did not in fact belong to the deceased; that the deceased had sold the property to her before her death and therefore it was not available for distribution to the beneficiaries. The applicant had alleged that she had not accounted for Kshs.8,226,320/= that the deceased had left in her bank accounts. Her response was that the deceased had withdrawn and used the money before her death. On the said Kshs.2,563,927/= that the applicant was seeking, she stated that the request was premature given the ongoing litigation on which money would be spent, and there was the proposed audit on which money would also be spent.

7. The applicant was represented by Mr. Mwoka and the respondent by Ms. Kalei.

8. The applicant stated that the respondent failed to account for Kshs.8,226,320/= that the deceased held in account number 6537330018 at Commercial Bank of Africa. The respondent filed a supplementary affidavit in which she annexed the bank statement from the bank in respect of the account. It showed that as of 28th October 2016 when the deceased died, the account did not have the alleged Kshs.8,226,320/=. The account balance as of 15th September 2016 was Kshs.353,398/95, and there was no credit to the account subsequently that would have made the account have the alleged Kshs.8,226,320/=. I find that the applicant’s claim to the money has no basis.

9. There appears to be no dispute that the respondent has since the grant transferred Flat No. B7 in LR No. 1870/IV/137 – Nairobi and House No. – 4 in LR No. 1870/X/97 – Nairobi to herself. However, following the ruling by this court on 28th September 2020 the respondent was ordered to surrender 1/5 of the entire estate of the deceased to the applicant. She is now saying that Flat No. B7 in LR No. 1870/IV/137- Nairobi did not all along belong to the deceased; and that the property belonged to her by the time the deceased died. In the supplementary affidavit that she swore on 31st March 2021 she stated that her and the deceased were tenants in common in respect of the property having obtained a lease on 4th December 1987 (“LKV2”). Subsequently, in 1988 the deceased sold her share in the flat to her. She got her brother Harcharn Singh Viridy to swear an affidavit on 25th February 2021 on his behalf and on behalf of their sisters Arvinder Viridi and Manjeet Kaur Viridy to state that in April 1988 the deceased sold her interest in the flat to the respondent.

10. The applicant stated that the respondent, having indicated in the petition that the estate of the deceased comprised this flat, cannot be heard to say now that in fact it did not; or that it belonged to her all along.

11. It is a trite principle of law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings or which is at variance with the averments of the pleadings goes to no issue and must be disregarded (**Dakianga Distributors (K) Ltd –v- Kenya Seed Company Ltd [2015]eKLR**). However, it is evident that on 4th December 1987 the deceased and the respondent became the registered lessees of the property. The brother and sisters of the two agree that in April 1988 the deceased sold her share to the respondent.

12. At the time of the filing of the petition, the respondent produced the lease dated 4th December 1987 that showed that her and the deceased held this property in common. That being the case, I find that Flat No. B7 in LR No. 1870/IV/137 – Nairobi is the property of the respondent. It ceased to belong to the deceased in 1988, although the lease still reflected her as a co-owner. It follows that the certificate of confirmation that had been issued in this cause has to be amended to show that Flat No. B7 in LR No. 1870/IV/137 – Nairobi will go to the respondent absolutely.

13. The respondent transferred House No. 4 in LR No. 1870/X/97 – Nairobi into her name following the confirmation of the grant. In the same way the vehicle Toyota KBW 438A, the safe at ABC Bank Kenya, and the proceeds in A/C No. [Particulars Withheld] at Paramount Bank, A/C No. [Particulars Withheld] at Paramount Bank and A/C No. [Particulars Withheld] at Commercial Bank of Africa went to her. In law, she was to hold all these properties in trust for herself and for the applicant who held 1/5 share in them.

14. As was stated in **Stephens and Others –v- Stephens and Another [1987]KLR125**, the respondent is the administrator of the estate of the deceased pursuant to the grant issued by this court and is therefore a trustee who stands in a fiduciary relationship to the applicant and she will continue in this relationship until she has paid all the debts and the expenses of the estate, given to the applicant her 1/5 entitlement and rendered to her an accurate account of her administration of the estate of the deceased.

15. When the petition was filed it was indicated that it had no liability. I consequently direct the respondent to provide a full and accurate account of her administration of the estate of the deceased in which she will show:-

- (a) how much money was in each named bank account at the time the deceased died;
- (b) how much money is in each named bank account as of the date of the account;
- (c) how any money from the accounts has been spent and/or invested, on what and where, with the necessary documentary evidence;
- (d) how much property or money was in the safe at ABC Bank; and
- (e) where the vehicle is, and its condition, and if sold, for how much and where the proceeds are.

This report should be filed in the court and served on the applicant within 30 days' from today. The applicant shall be at liberty to respond by affidavit within 14 days of service.

16. Within 14 days from today, the counsel of the parties will agree on an independent person or firm to value House No. 4 on LR No. 1870/X/97 – Nairobi. The valuation be done and the report filed within 14 days of valuation. Either party is at liberty to identify a buyer for the house so that the proceeds be shared with the applicant getting 1/5 share. Either party will be at liberty to buy out the other.

17. This matter shall be mentioned on 5th July 2021 for further orders.

18. I make no orders as to costs.

DATED and DELIVERED NAIROBI this 25TH day of APRIL 2021.

A.O. MUCHELULE

JUDGE