



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**SUCCESSION CAUSE NO. 259 OF 2013**

**IN THE MATTER OF THE ESTATE OF DALIP SINGH DHANJAL (DECEASED)**

**RULING**

1. The deceased herein died intestate on 15<sup>th</sup> July, 2010. Subsequently, his son Nirmal Singh Dhanjal petitioned for a grant of representation as the sole beneficiary. A grant was made and issued to him on 19<sup>th</sup> December, 2013 and later confirmed on 14<sup>th</sup> February 2014. However, his sister Jaswinder Kaur Koundu moved to this court seeking revocation of the grant on grounds that it was obtained fraudulently and through concealment of material information. On 26<sup>th</sup> November, 2018, the said grant was revoked by consent and afresh one issued jointly to the two.

2. Meanwhile, vide an application dated 12<sup>th</sup> November, 2018, Sukhwant Kaur Dhanjal Kundi and joginder Singh Dhanjal being children to the deceased's brother sought to be enjoined as interested parties on grounds that the deceased and their father were engaged in joint business as a family. It was in the same application that disclosure was made that the deceased was pre-deceased by a son known as Kirpal Singh Dhanjal also known as Rajpal Singh Dhanjal who left a widow by the name of Iderpal Kaur Dhanjal with whom they had sired a son known as JSD born on 10<sup>th</sup> January, 2006 (a minor).

3. Through a Chamber Summons dated 18<sup>th</sup> August, 2020 the mother to Jasdev Singh being a daughter In-law to the deceased by virtue of being a widow to the deceased's son, also deceased moved this court under Sections 26, 27, 28, 47, 70, 83 (a) and (b) and of the law of succession and Articles 159, 35(1) and 40 of the Constitution seeking;

**(1) That the Honorable court be pleased to certify this matter as urgent and dispense with it in the first instance.**

**(2) That Inderpal Kaur Dhanjal a dependant and a beneficiary of the estate of Dalip Singh Dhanjal ( deceased) be enjoined as a party to these proceedings.**

**(3) That no grant of representation to the estate of the above named Dalip Singh Dhanjal who died on the 15<sup>th</sup> July 2010, has been confirmed, such reasonable provision be now made for the applicant as a dependant of the deceased out of his net estate as the court thinks fit.**

**(4) That to enable the applicant to participate meaningfully in these proceedings, an order be issued directed at the administrators as the personal representatives of the deceased, for the discovery, production under oath and inspection within such time as the court shall stipulate, of all the documentation, statements and records pertaining to all the assets of the estate of the deceased including all the asses located in Kenya and elsewhere in the world.**

**(5) That this Honorable court do order that a specific share of the estate of the deceased herein, Dalip Singh Dhanjal be given to the applicant and her son JSD herein and or that reasonable provisions be made by way of periodical payment or a lump sum as this Honourable court may think fit.**

**(6) That this Honourable court be pleased to grant such other or further orders and/or issue such directions as it shall deem fit and just having regard to the nature and circumstance of this case.**

**(7) That costs of this application be provided for.**

4. The application is premised upon grounds set out on the face of it and an affidavit in support sworn by the applicant on 10<sup>th</sup> July, 2020. She averred that by virtue of being a widow to the deceased's son, she and her son were entitled to a share of the estate as dependants within the meaning of Section 26 of the Law of Succession Act.

5. She further stated that, before the grant would be confirmed, the court does make reasonable provision in her favour and her son all of whom are residents of UK. She urged the court to order release of a sum of kshs325,000 monthly to meet expenses for house rent, food, school fees, school related expenses and domestic bills.

6. In response, Nirmal Singh Dhanjal filed a replying affidavit sworn on 3<sup>rd</sup> September, 2020 and grounds of opposition of even date through the firm of Buti which has since ceased acting for him arguing that the application was similar to another one dated 4<sup>th</sup> February 2019 which was still pending hence should be dismissed.

7. Through her replying affidavit sworn on 23<sup>rd</sup> September 2020, Jaswinder Kaur Koundu recognized the minor herein as a beneficiary to the estate and that his mother the applicant herein can represent his interest. She however disputed the claim that the applicant was a dependant to the deceased by virtue of being a daughter In-law to the deceased. In her rejoinder, the applicant filed a supplementary affidavit sworn on 11<sup>th</sup> September, 2020 stating that her earlier application dated 4<sup>th</sup> February was withdrawn and a withdrawal notice dated 11<sup>th</sup> August, 2020 filed the same date. She further stated that Nirmal Singh Dhanjal had in his affidavit sworn on 20<sup>th</sup> February, 2020 recognized her as a beneficiary.

8. When the application came up for directions, the court directed parties to file submissions. Consequently, the applicant filed hers through the firm of Oloo on 18<sup>th</sup> September, 2020. On her part, Jaswinder Kaur Kondu (2<sup>nd</sup> administrator) filed hers on 28<sup>th</sup> October, 2020 through the firm of Oraro and company advocates. The firm of Buti then representing the first administrator one Nirmal Singh Dhanjal filed their submissions on 25<sup>th</sup> September, 2020.

9. During the pendency of the suit, parties tried to negotiate with a view to reaching a compromise and settlement in respect of the application. On 8<sup>th</sup> December, 2020 they agreed by consent on supply of all documents in possession of Mr Buti which were being sought by the applicant.

10. On 15<sup>th</sup> December, 2020 parties agreed on an initial reasonable provision for the minor at Kshs 200,000 payable by 18<sup>th</sup> December 2020 through the minor's advocates.

11. On the same day, Mr Oloo confirmed that his client was not interested in the estate save for the interest of the child. Parties therefore remained with the only issue for determination as that of reasonable provision.

#### **Submissions by the Applicant.**

12. The applicant's counsel Mr. Oloo submitted on three issues namely;

**(1) Whether the applicant has a right of representation and an interest in the estate of Dalip Singh Dhanjal**

**(2) Whether the applicant's interest in the net estate of Dhanjal should be disregarded by virtue of procedural technicalities**

**(3) Whether the application is merited.**

13. Learned counsel submitted that by virtue of the applicant being a widow to the deceased's son, she was automatically qualified to be a dependant of the estate together with her son. Counsel referred to Section 26 of the Law of Succession which recognizes a grandchild as a dependant to a deceased person.

14. Regarding production of accounts, counsel relied on the holding in the case of **Brion Kadima Vs William Musera & another (2017) e KLR** where the court held that;

**“within 6 months from the date of the grant, an administrator is required to submit a statement of accounts”.**

#### **1<sup>st</sup> Respondent's submissions.**

15. Mr Buti, then appearing for the 1<sup>st</sup> administrator (1<sup>st</sup> respondent) basically relied on his client's aforesaid grounds of opposition and replying affidavit. He contended that the instant application is improperly on record bearing in mind that a similar application dated 24<sup>th</sup> February, 2019 is still on record. In fact, at paragraph 9 of his submission filed on 25<sup>th</sup> September, 2020 Mr Buti submitted that the 1<sup>st</sup> administrator had already recognized the applicant as a beneficiary of the estate herein together with her son.

16. As regards submission of accounts, Mr. Buti submitted that they had deposited the same in court and that they were available for the applicant to access.

#### **2<sup>nd</sup> Administrator's submissions.**

17. It was submitted by counsel representing the 2<sup>nd</sup> administrator that she was not opposed to the applicant representing the interest of the minor. Counsel submitted that the minor can be represented by the applicant as a next friend. Learned counsel however submitted that the applicant in her capacity was not a dependant pursuant to the interpretation of Section 29 of the Laws of the Law of Succession.

18. It was submitted that under Section 29 of the Law of Succession a daughter in law is not recognized as a dependant. In support of this position, learned counsel placed reliance in the case of in **Re estate of Munyua Mbeke( deceased) ( 2015) e KLR** where the court held that;Section 29 of the law of Succession does not recognize a daughter in law as a dependant . In further support of that position, Counsel referred to the case in **Re estate of Cecilia Wanjiru Kibiche ( deceased) ( 2016) e KLR**.

### **Determination**

19. I have considered the application herein, affidavit in support, responses thereto and oral submissions by parties' respective submissions. In her application, the applicant sought three key prayers as follows;

**(1) An order to be enjoined as a party to this suit.**

**(2) To be supplied with various documents and statements relating to the estate.**

**(3) An order claiming for her reasonable provision and that of her son as a minor beneficiary.**

20. As earlier stated, some consent was recorded before canvassing the application herein. On 8<sup>th</sup> December,2020 parties agreed by consent for Mr Buti to produce and supply all necessary documents to Mr Oloo who would then photocopy them at his own cost. That prayer on production of documents is already settled. The rest of the claim is with regard to the issue of authorization for reasonable provision of the applicant and the minor. As regards the pendency of an application dated 24<sup>th</sup> February 2019, the record is clear that it was withdrawn vide a notice of withdrawal dated 11<sup>th</sup> August 2020.

21. It was stated and indeed admitted that the applicant and her son have been staying in UK for quite a long time. Parties agreed on an initial provision of Khs 200,000 but disagreed on the duration of payment whether monthly or not. It is worth noting that, the application for confirmation has been pending for long due to unnecessary applications.

22. Although all parties have in principle agreed that the minor is a beneficiary and that the mother is not interested in the estate save for representing her son's interest, I do not understand why they should continue delaying confirmation of the grant. Further, the applicant has not told the court how she has been surviving since the deceased died in 2010. She does not state, who has been supporting her and the child and why the urgency now for provision.

23. To grant a provision of Ksh 200,000 every month will amount to encouraging indolence in fast tracking this suit. I am not convinced that is the solution. I do urge parties to fix the matter for confirmation. After confirmation, they will be able to assess funds for their upkeep. For those reasons, I am not persuaded enough to make monthly payments. A court will intervene only when there is an urgent need which I do not find in this case for now. Therefore, in the circumstances, I will not make any monthly provision. However, I am persuaded to make one more provision of a lumpsum amount of Ksh 200,000 payable through the applicant's advocate within 7 days from the date of this ruling to take care of any urgent need pending processing of the confirmation application.

24. Concerning the issue whether the applicant is a dependant or beneficiary of the estate, the applicant's counsel told the court that his client is not interested with the estate as she is only interested in protecting her son's right.

25. Although that issue has technically been abandoned, I wish to clear some ambiguity and understanding of the law regarding the person entitled to dependency. The question as to who is a dependant is provided for under Section 29 of the Law of Succession which provides;

**“For the purposes of this part dependant means;**

**(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death.**

**(b) such of the deceased's parents, step parents, grandparents grandchildren, step children, children who the deceased has taken into his family as his own, brothers, and sisters, and half-brothers and half-sisters as were being maintained by the deceased immediately prior to his death and**

**(c) where the deceased was a woman her husband if he was being maintained by her immediately prior to the date of her death”.**

26. From the above definition, a daughter in law is not recognized as a dependant. I do agree with the holding in the case of the estate of **Cecilia Wanjiru Kibiche (deceased) (Supra)** where the court was categorical that a daughter in-law is not recognized as a dependant or beneficiary.

27. In this case, the applicant cannot claim dependency. However, her son can qualify if proved that he was being maintained by the deceased immediately prior to this death. Fortunately, in this case parties have agreed that the minor herein being a grandson is as one of those people recognized as dependants by virtue of his father. He could as well claim through his deceased father's estate after processing through a next friend a grant of letters of administration Ad litem.

28. Be that as it may, the minor has already been accepted as a beneficiary and accordingly I do recognize him as such.

29. Can the applicant appear as an interested party? The issue of representation came up because of the age element of the minor. Ordinarily,

Section 58 of the Law of Succession does cater for the interest of a minor where a resulting trust exist. That is already taken care of because there are two administrators.

30. However, when there are competing adverse interests to those of the minor by the administrators, the court in exercise of its own discretionary powers under Section 47 of the Act and rule 73 of the P&A Rules will make such orders as it will be necessary to meet the ends of justice.

31. The key issue here is in what capacity will the applicant appear on behalf of the minor. Obviously, she cannot be addressed as an interested party as she has no ascertainable stake in the estate as defined in the Black Laws Dictionary which defines interested party as (a) person who has a recognizable stake (and therefore standing) in a matter. See **Elizabeth Nyambura Njuguna & another suing as the legal representatives of Njuguna Mwaura Mbogo ) VS E.K Banks Limited and 2 others; Edward Kings Onyancha Maina ( interested party ) ( 2019 ) e KLR** where the court held that;

**“interested party is one who has a stake in the proceedings, though he or she was not party to the cause or motion. That he or she will be affected by the decision of the court when it is made either way”**

32. The applicant cannot therefore claim to be an interested party. She can either come in as representing the estate of the deceased husband after securing a grant of letters of administration Ad litem or full grant or simply as Oraro advocate submitted, be a next friend to the minor representing his interest.

33. Therefore, the prayer of being an interested party by virtue of being a dependant cannot apply. Using my discretion and taking into account that parties are in agreement that she appears as a representative of the minor, I will direct that Mr.Oloo be appearing for the minor beneficiary through the mother. This is informed from the standing point that there are no special rules or procedure of representing a minor in a probate dispute. In such a scenario, Rules 49 and 73 of the Probate and administration Rules and Section 47 of the Law of Succession Act comes to play.

34. As regards the issue of submission of accounts, the orders are already in place and Nirmal should comply.

35. Having held as above, the application herein partially succeeds and partially fails with orders that;

**(1) The applicant shall represent the interest of the minor as next friend with the lawyer appearing for the minor beneficiary.**

**(2) that the administrators are directed to withdraw from the estate account a lumpsum amount of Ksh 200,000 as reasonable provision of the minor within 7 days from the date of this ruling.**

**(3) That the administrators to move with speed and fix the application for confirmation of grant for hearing.**

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 19TH DAY OF APRIL,2021**

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**J. N. ONYIEGO**

**JUDGE**