



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI (NAIROBI)

JUDICIAL REVIEW DIVISION

MISCELLANEOUS CIVIL APPLICATION NO.13 OF 2020

RANSLEY McVICKER

& SHAW ADVOCATES.....ADVOCATES/RESPONDENTS

VERSUS

MINAR KATHERINE HOLROYD

SUNEINA LEONORA PULLING

LAURA SUSHILA PULLING

(The Administratrixes of the Estates of the

Late Dipa Jashbai Pulling (Deceased).....CLIENT/APPLICANTS

RULING

The application before court is a Chamber Summons dated 18 February 2021 by the representatives of the estate of the late Dipa Jashbai Pulling. In the application the applicants are seeking for the orders framed as follows:

- “1. This application be hereby certified as urgent and service thereof be dispensed with in the first instance.***
- 2. There be a stay of execution of the taxing master’s ruling dated 5th February 2021 taxing the respondent’s bill of costs dated 18th May 2021 at Kshs. 17,400,000/- pending the hearing and determination of the application herein.***
- 3. That the taxing master’s ruling dated 5th February 2021 taxing the respondent’s bill of costs dated 18th May 2020 at Kshs. 17,400,000/- be hereby set aside in its entirety.***
- 4. In the alternative to paragraph 3 above, the respondent’s bill of costs dated 18th May 2020 be hereby taxed by a different Deputy Registrar in the Division.***
- 5. Costs in the applicant’s favour”.***

The summons is made under **Sections 1A, 1B & 3A of the Civil Procedure Act Cap. 21** and **Rule 11 (1) & (2) of the Advocates (Remuneration) Order**.

It is supported by the affidavit of Sunenia Leonora Pulling sworn on 17 February 2021.

The applicant’s case is that on 23 November 2021, the taxing master fixed the respondent’s bill of costs dated 18 May 2020 for ruling on 4 February 2021 despite the applicant’s protests that the deceased’s estate was not properly represented because the grant of letters of administration to her estate which had been made in the United Kingdom had not been resealed by this Honorable Court.

According to the applicant, as at the time of swearing her affidavit, the resealed grant was in the process of gazettment and the gazettment period was set to expire on 30 November 2020. It is only after the gazettment and the resealing of the grant that the applicants would have authority to represent the deceased in any proceedings against the estate.

Despite the fact that the deceased's estate was not properly represented in the taxation proceedings, the respondents bill was taxed and that estate condemned to pay Kshs. 17,400,000/- as advocates costs.

Based on the certificate of costs, the respondent has sought to have the taxed costs as judgment of this Honourable Court against the applicants and have further sought to register a charge over the deceased's estate adjudged to belong to the deceased in Nairobi Environment and Land Court No. 200 of 2008.

The applicant argues that the taxation proceedings should not have been taken before the grant was resealed; that the proceedings were *res judicata* in view of an earlier ruling delivered by this Honourable Court in Judicial Review No. 129 of 2009 on 17 November 2017 and also that the taxation proceedings were *sub judice* High Civil Miscellaneous Application No. 25 of 2017 in which the respondents had filed party and party bill of costs and which bill is still pending for taxation.

The applicant has also urged that there was no evidence of retainer between the deceased and the firm of Messrs Virginia Shaw & Company Advocates.

Virginia Wangui Shaw, the learned Counsel from the firm of Messrs Ransley Mc Vicker & Shaw Advocates swore a replying affidavit opposing the applicant's application.

According to Mrs. Shaw, she was instructed by the late Dipai Pulling as early as April 2008. Her firm of Advocates in which she is the sole survivor represented the late Pulling in various matters including High Court Miscellaneous Civil Application No. 129 of 2009 and in a meeting between the National Museums of Kenya, Suchan Investments and Sandeep Desai held on 16 July 2008 on the status of ownership of the property known as LR. 209/1916/6. The Learned counsel also represented the late Pulling in Civil Appeal No. 46 of 2012.

During her lifetime, Dipai acknowledged that she owed the respondent's firm fees but that she was suffering from ill-health and was unable to get resources to pay. Eventually, Counsel filed a bill of costs in 2017; the bill was, however, not taxed as it was withdrawn on 17 January 2020 when Counsel learned of her client's death. According to her "*the issue had to wait the appointment of administrators*".

The only question whose answer should resolve this application is whether respondent's bill of costs dated 18 May 2020 was competent, having been filed against a purported representative of the deceased's estate.

The bill of costs was filed against Neisha Eleanor Krastanoff who is described in that bill as "*the administration ad litem to the Estate of Dipa Pulling (Deceased)*".

It is clear from Virginia Wangui Shaw's affidavit and submissions that Mrs. Shaw was not only aware of her client's death as at the time she filed the bill but also that she was aware that, in the wake of the death of her erstwhile client, only the representative or representatives of her estate could stand in her stead in the subsequent taxation proceedings.

The question, therefore, is whether the said Neisha Eleanor Krastanoff was indeed the administratrix *ad litem* to the estate of Dipa Pulling at the material time. The answer to this question appears to be in the negative. There is no evidence that the person sued as '*the administrator ad litem*' had the authority of this Honourable Court or any other Court in Kenya to represent the deceased in the taxation proceedings or any other proceedings for that matter.

It is acknowledged, however, that on 18 December 2020 Neisha Eleanor Krastanoff obtained limited grant of letters of administration *ad litem* in this Court's Succession Cause No. 139 of 2020 but it is clear on the face of that grant that it was "*limited only to the purpose of prosecuting, defending and/or instituting proceedings related to ELC No. 200 OF 2008 – Dipa Pulling vs Suchan Investments Limited & 3 Others*".

The purpose for which this grant was made was restricted and under no circumstances could it be extended to taxation proceedings or indeed any other proceedings apart from those specified in the grant.

Limited grant apart, it is common ground that at the time the bill of costs was filed the grant of letters of Administration of the Estate of Jashbai Pulling was on 12 February 2020 made to Minar Katherine Holroyd, Suneina Leonora Pulling and Laura Sushel by the High Court of Justice England and Wales.

However, it was not until 15 December 2020 that this grant was resealed by this Honourable Court. Counsel for the respondent argued that it was not necessary to have the grant resealed before it could be used in this authority.

According to Counsel "*letters of administration are issued in rem. Therefore, the allegation that a resealing is what gives administrative authority to act is non sequitur*".

This argument, however, appears to contradict the learned Counsel's deposition made in an affidavit she swore on 27 February 2020 in ELC No. 200 of 2008 to the effect that:

"6. That the plaintiff's family is yet to appoint a legal representative to her estate thus I am not in a position to file the Bill of Costs arising from this suit and also that advocate/client bills in other suits".

It has been noted that the grant of letters of administration had been made by the High Court of Justice England and Wales on 12 February 2020. If the respondent was of the firm view that since the grant had been made nothing more needed to be done for it to be used in this

country, there is no reason why she should have been swearing on 27 February 2020 that she could not file a bill of costs for the reason that a representative to the deceased's estate was yet to be appointed.

More importantly, Section 77(1) of the Law of Successions Act Cap. 160 requires a grant of either probate or letters of administration made in any Commonwealth country or in any other foreign country to be deposited in this Honourable Court and sealed by this court's seal before it can have the force and effect of a grant made and confirmed by this court. That section reads as follows: -

(1) Where a court or other authority, having jurisdiction in matters of probate or administration in any Commonwealth country or in any other foreign country designated by the Attorney-General by notice in the Gazette, has, either before or after the commencement of this Act, granted probate or letters of administration, or an equivalent thereof in respect of the estate of a deceased person, such grant may, on being produced to, and a copy thereof deposited with the High Court, be sealed with the seal of that court, and thereupon shall be of like force and effect, and have the same operation in Kenya, as if granted and confirmed by that court.

So, it does not matter that as at the time the respondent's Bill of Costs was filed, the grant of the letters of administration had been made in England. The grant would only assume the force of law in Kenya after it had been deposited in this court and sealed pursuant to the provisions of Section 77(1) of the Law of Succession Act.

I need to add that according to section 4(1)(a) of the Law of Succession Act, succession to immovable property in Kenya of a deceased person can only be regulated by the law of Kenya, whatever the domicile of that person at the time of his or her death. The rationale is this: a person who, at the time of death, was not domiciled in Kenya may have his or her estate administered by the court in the jurisdiction within which such a person was domiciled.

Due to limitations of territorial jurisdiction under international law, a grant made by such a foreign court is only enforceable within the country the grant has been made. The purpose of resealing the grant is therefore to give it the cachet of a Kenyan court in order for the grant to be enforceable with respect to immovable property located in Kenya, regardless of the deceased's domicile.

It follows that Neisha Eleanor Krastanoff could not have been a duly appointed representative of the deceased's estate on 18 May 2020 when the bill was apparently filed because it is only on 15 December 2020 that the grant of letters of administration of the estate was sealed by this Honourable Court. The question as is who a personal representative was dealt with in **Trouistik Union International & another vs Jane Mbeyu & another (1993) eKLR** where the court noted as follows: -

“To determine who may agitate by suit any cause of action vested in him (the deceased) at the time of his death one must turn to Section 82(a) of the Law of Succession Act. That Section confers that power on personal representatives and on them alone.

As to who are personal representatives within the contemplation of the Act, Section 3, the interpretative Section provides an all inclusive answer. It says “personal representative means executor or administrator of a deceased person”. It is common ground that the deceased in this case died intestate. Therefore the only person who could answer the description of a personal representative, is the administrator of the estate of the deceased. The next enquiry must answer the question, who is an administrator within the true meaning and intendment of the Act? Section 3 says “Administration means a person to whom a grant of letters of administration has been made under the Act”.

The grant of letters of administration made to the administrators of the deceased's estate would only have the legal effect as contemplated under Section 3 of the Act only after it had been deposited in this Honourable Court and sealed; without complying with Section 77 of the Act, the grant remained hollow and of no legal consequence to any proceedings in this country. In any event, no grant of letters of administration of the deceased's estate was ever made to Neisha Eleanor Krastanoff as the either as a sole or joint representative of the deceased's estate. The grant made by the High Court in England was made to Minar Katherine Holroyd, Suneina Leonora Pulling and Laura Sishila Pulling. All that Neisha Eleanor Krastanoff obtained was a limited grant which, as earlier noted, was restricted in its application.

It follows that the respondent's bill of costs was misconceived because it was effectively lodged against the deceased herself. The subsequent proceedings were, therefore, a nullity.

I would therefore allow the applicant's summons in terms of prayer 3. I will go further and strike out the respondent's bill dated 18 May 2020 and amended on 10 November 2020.

Considering that the grant made by the High Court of England and Wales in respect of the deceased's estate has now been sealed by this Honourable Court, the respondent is at liberty to file a fresh bill of costs against the administrators of administratrixes of the deceased's estate for recovery of her fees or costs.

Talking of costs, there should be no debate as to whether Mrs. Shaw or her firm of advocates are entitled to their costs because it is clear from the Court of Appeal judgment in **Civil Appeal No. 46 of 2012 Suchan Investment Limited vs Ministry of National Heritage & Culture & 3 others (2016) eKLR** that she represented the deceased in the meeting scheduled by the Minister on 21 August 2008 at the National Museum of Kenya but which meeting the staff of the National Museum of Kenya were not aware of. She also represented the deceased, in the appeal case and also in the High Court proceedings in High Court Miscellaneous Application No. 129 of 2009 whose judgment was the subject of the aforesaid appeal.

Considering the period it has taken to resolve this matter, I direct that should the respondents file afresh bill of costs, the same shall be disposed of on priority basis. The applicants will have costs of the application.

SIGNED, DATED AND DELIVERED AT NAIROBI ON 20TH DECEMBER, 2021.

NGAAH JAIRUS

JUDGE