



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSES NOS. 712 OF 2007 AND 941 OF 2011

IN THE MATTER OF THE ESTATE OF MANUBHAI KHODIDAS RATHOD (DECEASED)

RISHMITA RATHOD.....APPLICANT

VERSUS

BABULAL CHANDULAL RATHOD.....1ST RESPONDENT

JOSHNA BEN CHAGANLAL RATHOD.....2ND RESPONDENT

RULING

1. The deceased Manubhai Khodidas Rathod died on 15th March 1992. He left one property known as L.R No. 209/40/5. His grandsons Babulal Chandulal Rathod (the 1st respondent) and Kirti Chaganlal Khodidas petitioned this court for the grant of letters of administration intestate. The grant was issued to them on 18th June 2007. It was confirmed on 22nd July 2008. The property was inherited by the 1st respondent. Kirti Chaganlal Khodidas later passed away. The 1st respondent sold the property for Kshs.44 million to APA Investment Co. Ltd.

2. Rohil Satish Khodiras is a great grandson of the deceased. He filed an Originating Summons **No. 68 of 2011** before the ELC Court to challenge the grant and the sale. He alleged that the deceased had died testate to the knowledge of these petitioners, and had left 16 beneficiaries (grandchildren and great grandchildren who had been disinherited). The dispute was referred to this court. It is now **Succession Cause No. 941 of 2011**. The same Rohil Satish Khodira filed an application for the revocation of the grant. The application was made in the instant cause. The reasons for seeking revocation were substantially the same as those relied on in the originating summons. A similar application for the revocation of the grant was filed on 21st July 2014 by another grandson of the deceased. He is Joshnaben Chaganlal Rathod.

3. The applicant Rishmita Rathod is the daughter of the late Jaswani Rathod who was the son of the deceased. On 26th June 2019 she filed the present application seeking the revocation of the grant that was issued to the 1st respondent and the late Kirti Chaganlal Khodidas on 18th July 2007, and confirmed on 22nd July 2008. She also sought that this cause be consolidated with High Court **Succession Cause No. 1997 of 1996**. Her case was that upon the death of the deceased on 15th March 1992, her father the late Jaswani Rathod and the late Chandulal Rathod petitioned the court for the grant of probate. This was because the deceased had left a written Will. She annexed a copy of the Will that was dated 5th May 1974. The grant was issued on 19th November 1996. In her application for revocation, she challenged the grant issued to the 1st respondent and Kirti Chaganlal Khodidas on the basis that the deceased had not died intestate, and that in respect of the same estate the grant of probate had already been issued to her late father and another.

4. The 1st respondent and the 2nd respondent (Joshnaben Chaganlal Rathod) each filed a response. Each filed grounds of opposition. The responses were similar, that:-

a. the application had been overtaken by events;

b. the matter was *res judicata*;

c. the application was frivolous, vexatious and an abuse of the process of the court; and

d. the application should be struck out.

5. The applicant was represented by Ms Shabana and the 2nd respondent by Mr Oyatta and the 3rd respondent by Mr Nyasani.

6. In arguing the point that the application was *res judicata* which had been overtaken by events, the respondents made reference to the order of the court issued on 29th May 2018 that followed a compromise. It was agreed (and it was ordered that) the grant issued to the 1st respondent, and the certificate of confirmation that made him the sole beneficiary of the estate of the deceased be revoked and nullified. In the same order the respondents were appointed as the joint administrators of the estate of the deceased. The grant was to be confirmed at a later date.

7. I agree that, now that the grant issued to the 1st respondent on 18th July 2007 and confirmed on 22nd July 2008 was revoked and annulled, the application by the applicant is misconceived as the grant and certificate of confirmation no longer exist. Similar applications seeking the same orders were compromised by way of a consent, and therefore the present application in terms of prayer 1 is *res judicata*.

8. As for the prayer for consolidation, I consider that the claim that the deceased left a written Will and that there was issued a grant of probate in **Cause No. 1997 of 1996** is not a new matter. It was the basis of the applications of revocation which were eventually compromised. Nonetheless, it is illegal to have two succession causes running in respect of the same deceased, in respect of the same estate. Two causes running separately may lead to embarrassingly conflicting decisions in respect of the same deceased. Consolidation of the two causes will lead to all the issues relating to the deceased's estate being heard once and for all.

9. I consequently order the consolidation of **Succession Causes Numbers 712 of 2007, 941 of 2011 and 1997 of 1996**.

10. In the limited sense, therefore, I allow the applicants application.

11. Costs shall be in the cause.

DATED and DELIVERED electronically, following consent of the parties, at NAIROBI this 30TH day of APRIL 2020.

A.O. MUCHELULE

JUDGE