



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO. 286 OF 1999

IN THE MATTER OF THE LATE MUHINDER SINGH SANTOKI (DECEASED)

JAGJIT SINGH SOUND.....APPLICANT

VERSUS

JESVIR SINGH REHAL.....RESPONDENT

JUDGMENT.

1. Grant of probate of written will for the Estate of Mohinder Singh Santokh (deceased), who died on the 26/5/1999 was granted to Jesvir Singh Rehal of Box 93 Nakuru on the 17th January 2000. The said grant was subsequently confirmed (though not certificate of confirmation has been exhibited by either of the disputant parties herein. I have not seen any in the court file).

2. By a Chamber Summons dated 9/8/2018, are Jagjit Singh Saund moved the court under **Section 47 & 76 of Cap 160, Rules 44 (1), 49 & 73 of the Probate and administration Rules for ORDERS:**

*1) That the grant of Probate issued on the 17/1/2000 and the certificate of confirmation be revoked and or annulled.*

*2) That title deed for Land Parcel No. Nakuru Municipality Block 5/202 and LR NO. Nakuru Municipality Block 3/31 registered in the Respondent's names be cancelled and the same do revert to the Estate of the deceased for distribution to the rightful beneficiaries.*

*3) That costs of the application be provided for.*

3. On grounds stated on the face of the summons and affidavit of the applicant sworn on the 9/8/2018 and annexures attached thereto.

The summons are opposed. The Respondent sworn an affidavit in opposition on the 21/1/2019.

To urge he application, the parties filed written submissions, which I have considered.

4. A brief background to the application will suffice.

The parties hereto are brothers-in-law. The Respondent Jesvir Singh Rehal is the only son of the deceased, and he sole administrator of the Estate of the deceased, who died on the 26/5/1999 at Nakuru. The deceased left a will dated 17/3/1992 appointing the Respondent as the sole executor of the said will. The deceased was serviced by his late wife, the Respondent and two daughters, Harnider Kaur Bharna and Baljit Kaur Saund, then both married. Left behind are several assets but of relevance in this cause are two properties namely:

*a) Nakuru Municipality Block 5/202.*

*b) Nakuru Municipality Block 3/31.*

5. These two properties are now registered in favor of the Respondent on the 23/10/2013 and 24/1/2002 respectfully and titles issued. It is the applicant's contention that the titles were fraudulently registered in Respondent's favour. The deceased daughter Baljeet Kaur Saund is married to the applicant with whom they have a daughter Amrit Kaur born on 30/10/1998.

6. At the time of the applicant's wife's death on the 18/10/2011, the family was and still resides on Block 5/202.

It is from this property and residential premises that the applicant avers that the respondent is well bound to evict him (respondent) and his

daughter from, upon his claim over the same as a beneficiary. The applicant also claims beneficial ownership of Block 3/31, a business premises where both operate a partnership business known as Redalf Garage (2012) (Certificate of business registration provided).

7. On the other hand, the Respondent avers that by the deceased's will, all assets devolves to him, and that his married sisters (including the applicants wife) are/were fully in agreement with the deceased's will that all assets devolve to him, that the applicant was also well aware of the fact. He further depones that the applicant is not, and was never a beneficiary as a brother – in- law, neither was he a dependant of the deceased, that marriage to his sister did not counter any beneficial rights to him, but that the deceased had only allowed him, and his wife (sister) to reside on the property as they arranged to buy their own property, which they did, but rented it out.

#### 8. ISSUES FOR DETERMINATION.

- 1) Whether the applicant has locus standi to seek revocation of the grant of probate of his father – in – law's.
- 2) Whether the applicant and his daughter were dependants of the deceased.
- 3) Whether the applicant has made out a case for revocation of the grant of probate to the Respondent on the 17/1/2000

#### 9. Locus Standi.

The applicant is a son-in-law to the deceased.

In the application for grant of probate to the deceased's will, the applicant was not named as a beneficiary.

Black's Law Dictionary, 9th Edition, page 1026, defines Locus Standi as

*“the right to bring an action or to be heard in a given forum”.*

10. Under the Law of Succession Act, Cap 160, any interested party may petition the court for revocation or annulment of a grant of representation.

The Court of Appeal addressed itself on the matter in **the case Rajesh Pranjivan Chudasama Vs. Sailesh Pranjiran Chudasama (2014) e KLR**, and rendered that

*“----- in our view the position in law is well settled. A litigant is clothed with locus standi upon obtaining a limited grant or a full grant of letters of administration in cases of intestate succession----”*

11. **Under Section 76**, a revocation of a grant may be sought by *“any person interested in the Estate of the deceased person. However, the Section does not define who an “Interested Party”, for purposes of annulment is, but only provides that such interested party may apply for its annulment or revocation.*

There is no consensus in the High Court as to who such interested party is. The section opens up space for anybody interested in the administration of a deceased's estate, and not the only person's stated under Section 66 and Rule 44 of the Probate and Administration Rules.

12. My understanding is therefore that any person interested in the administration of the deceased Estate, whether or not a heir beneficiary or a dependent, has sufficient standing to seek revocation under Section 76 A, B and C of the Law of Succession Act challenging the property of the grant making process. The interest must however be sufficient and demonstrable thus giving no room to busy bodies – **Re: Estate of Jackson Mugo Mathai (deceased) (2010) e KLR.**

13. I have perused the deceased's will. **Paragraph 3,4, and 5** states

*“I give and bequeath unto my trustee all my real personal estate moveable and immovable whatsoever and whosoever upon trust to sell, call in and convert into money all such parts thereof and shall not consist of money and after payment of the testamentary expenses to hold the residue of such monies upon trust firstly to pay therout all the expenses including dowry for the wedding of my daughter BALjit Kaur if she is married and the balance remaining thereafter to my trustee Jasbir Singh to belong to him absolutely----”*

14. I have also considered that the applicant's wife, waived her interests on the estate by her affidavit sworn on the 18/1/2003, together with her sister, at paragraph 4 thus

*“That we categorically state that we have no interest whatsoever in the estate of our late father and have agreed that only brother Jesvir Singh Rehal be the sole heir----”*

15. The wife married the applicant in 1997. The above waiver was made in 2003. It cannot be said that the applicant's wife did not know the implications of her waiver not what she deponed to, as well as that she and her family were living in the deceased's property. It is my view that had she had interest in the property, she would have not deponed the above or waive her interest therein, but would have asserted her claim over her father's estate. She did not support the application hereto by any means.

16. It is important to state here that the will has not been challenged at all. It is therefore stands valid.

The applicant did not have any beneficial or legal interest in the deceased's estate.

Mere fact of having been residing in the deceased's premises does not in itself give rise to legal interest thereto.

17. Section 29 (a) (b) and (c) of Cap 160 defines a dependant as

*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, grand-parents, grand children, step children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers, as were being maintained by the deceased immediately prior to his death-----"*

18. The applicant does not fall into any of the above categories. The deceased was not maintaining him and his wife and daughter immediately before his demise. If so, this has not been demonstrated.

As per the will, the applicant must have received dowry in 1997 when he married the daughter of the deceased, the only item provided for in the will for his daughter. Nothing to the contrary has been stated.

19. The deceased died in May 1999 two years after the applicant married the deceased's daughter. She waived all interest in the deceased estate by the affidavit alluded to above.

On the 18/1/2003, when this cause was pending for hearing in court, having been filed in 1999.

One would thus wonder on whose behalf the application was made, taking into account that the daughter was not interested in the estate assets.

20. Upon the above analysis I find and hold that the applicant was not a dependant of the deceased immediately prior to his death, nor is he a beneficiary or heir. He therefore does not qualify to bring the application under **Section 29 of the Act**, nor does he have the necessary Locus Standi to challenge the process of application or distribution.

21. A case for revocation of grant of Probate?

A party seeking to revoke or annul a grant must satisfy the following;

**Section 76:**

*a) That the proceedings to obtain the grant were defective in substance*

*b) That the grant was obtained fraudulently by the making of a false statement, or by concealment from the court of something material to the case.*

*c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently*

*d) -----*

22. **Section 107 (1) of the Evidence Act** is categorical that the burden of prove to any allegation of facts rests with the maker, and that any party that desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove those facts exist.

I have stated above that the fact that he applicant and his wife resided and continues to reside in the deceased's property does not give him any beneficial advantage and interest thereon. The Respondent does not deny that fact, and has explained the circumstances under which the applicant has continued to reside therein.

23. Allegations of fraud are serious and must be proved to the required standard, upon a balance of probability.

I have considered the application for grant of probate. The beneficiaries are stated, so are the deceased's assets. The beneficiaries did not raise any opposite concern over the will of their father, the deceased. They executed the necessary consents and agreed to the Respondent being the sole executor of the will.

24. The petition was duly advertised in the Kenya Gazette of the 3/12/1999 giving 30 days period for anyone objecting to lodge their objections. The applicant did not lodge any objections. There having been no objections, the grant of probate was thus given to the Respondent on the 17/1/2000.

25. Eighteen years thereafter, the applicant moved to court to challenge the process of obtaining the grant. Clearly, the applicant's awakened interest is on the two properties that he feels he should have a share though, as I have stated and held, he has no identifiable and demonstrable legal interest thereon.

The applicant has not shown, in my view, in what manner the grant was obtained fraudulently, thus no propriety of the grant making process was demonstrated.

26. In his affidavit in support of his application, the applicant at paragraph 11 states that no consent was obtained from him by the respondent prior to obtaining and or confirming the grant of probate.

I find this averment misplaced because, the applicant is not among the persons stated under Section 29 Cap 160 to have priority to apply. His consent was not necessary at all. It was the applicant's wife whose consent was necessary as a child of the testator, but as stated earlier, she waived her interest and rights over the estate of the deceased.

To that extend, the applicant can only be deemed as a busy body trying to interfere with the administration of the deceased's estate.

27. In the Estate of **Julius Miano (deceasdd) (2019) e KLR**, the court held that having found that the will was valid, and that the executors were the proper persons to apply for probate, the court could not fault whether the executors did. The court declined to revoke the gran.

28. On the theory issue of the transfer of the two properties by the executor (Respondent) to himself. The testator was clear in his will as to the fate of the properties and other movable and immovable assets – paragraph 5 and 6 of the will. That after payment of just debts, and dowry for wedding of his daughter – applicant's wife – the remainder of the estate was bequeathed to the Respondent, to belong to him absolutely.

29. Following the above, it was within the Respondents' rights under the will to transfer by transmission, the two properties to himself, which he did. There is no reason whatsoever to persuade the court to allow the applicants prayer 2, for cancellation of the respondents names from the titles, and order the same to revert to the estate of the deceased for distribution to the rightful beneficiaries. None of the rightful beneficiaries has complained.

30. For the above reasons, I find no merit in the applicant's summons for revocation or annulment of grant in respect of the deceased's estate.

31. The summons are dismissed with no orders as to costs.

**Delivered, Signed and dated electronically at Nairobi this 27th day of May, 2020.**

**J.N. MULWA**

**JUDGE**