



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**SUCCESSION CAUSE NO. 768 OF 2009**

**IN THE MATTER OF THE ESTATE OF THE LATE HARVINDER SINGH REHAL (DECEASED)**

**AND**

**IN THE MATTER OF AN APPLICATION BY THE DEFENDANTS OF THE ESTATE AMARDEEP SINGH REHAL**

**BALVINDER SINGH REHAL.....BENEFICIARIES/APPLICANT**

**VERSUS**

**KARMJIT KAUR REHAL.....PETITIONER/RESPONDENT**

**RULING**

Before me is a Notice of Motion brought by **BALVINDER SINGH REHAL**, who has sought leave of the Court to cross-examine the Petitioner/Administrator on her affidavit sworn on 7<sup>th</sup> August 2020.

1. The Applicant asserted that the affidavit in issue lacked clarity about the administration of the Estate of the late **HARVINDER SINGH REHAL**.
2. He asserted that the Statement of Account which the Respondent had filed in court, was not a reflection of the true, full and accurate account of the administration of the Estate of the deceased.
3. The Applicant held the view that the cross-examination of the Respondent would bring to light the contradictions of the Administrator, as regards the management of the Estate of the deceased.
4. By his supporting affidavit, the Applicant indicated that the Respondent had omitted certain properties from the Statement of Account.
5. He explained that the only reason why he had sought leave to cross-examine the Respondent was the desire to bring the matter to a close.
6. When canvassing the application, the Applicant indicated that the Respondent had made contradictory statements about the land parcel **L.R. NO. KISUMU/KANYAKWAR "A"/70**.
7. On the one hand she said that the parcel of land was a part of the Estate, whilst on the other hand she said that that parcel of land was not part of the Estate.
8. In the circumstances, the Applicant submitted that it was necessary for the court to determine the question as to whether or not that parcel of land formed a part of the Estate of the deceased.
9. The Applicant further submitted that if the parcel of land was a part of the Estate, it would be necessary to ask the Respondent how it was dealt with.
10. As the Applicant has demonstrated, through the decision in the case of **PROF. TOM OJIENDA & ASSOCIATES Vs NATIONAL LAND COMMISSION, MISC. APPLICATION NO. 29 "B" OF 2016**, the Court may order a deponent of an Affidavit to attend court, to be cross-examined. The 2 examples cited by the court, about when cross-examination of a deponent may be ordered are as follows;

***(a) Where allegations of matters***

*touching on fraud, mala fides,  
authenticity of the facts deponed  
to, or bad motive;  
(b) Where there was a conflict of  
Affidavits on record or where the  
depositions within one affidavit  
were conflicting.*

11. But the Hon. Lady Justice Sewe made it clear, in that case that;

*“There should be special circumstances before ordering a  
cross-examination of a deponent on an  
affidavit. The court must feel that  
adequate material has been placed  
before it, that shows that in the  
interest of justice and to arrive at the  
truth, it is just and fair to order cross-  
examination.”*

12. Therefore, when called upon to exercise its discretion on the issue about whether or not to grant leave for the cross-examination of the deponent of an affidavit, the court must satisfy itself that it was just and fair to order cross-examination.

13. The Applicant also cited the case of **IN THE MATTER OF THE ESTATE OF THE LATE KENNEDY MURIMI NJOGU (NYERI) SUCCESSION CAUSE NO. 1141/2011.**

14. In that case Mativo J., whilst acknowledging that the court has the discretion to order for the cross-examination of the deponent of an affidavit, noted thus;

*“Further, if credibility is at issue,  
or if crucial information is not  
obtainable through the affidavit  
evidence, then oral evidence will  
be required as may be necessary.”*

15. In the case before me, the Applicant’s primary intent is to have the court determine whether or not the parcel of land **L.R. NO. KISUMU/KANYAKWAR “A”/70** was a part of the Estate.

16. In my considered view, the determination of the issue concerning the proprietorship of that parcel of land does not depend on the credibility or otherwise of the Respondent.

17. The crucial information concerning the ownership of the parcel of land is obtainable through the Official Search at the relevant Lands Office.

18. And once the ownership of the said parcel of land is verified from the official records, it would not matter at all what the Respondent or the Applicant said on the said issue.

19. I therefore find that the intended cross-examination of the Respondent would not enhance the course of justice.

20. The converse is equally true, in my view: that the rejection of the quest for the cross-examination of the Respondent would not encumber the course of justice.

21. The authenticity of the facts about ownership is verifiable through a Search.

22. Accordingly, I find that the Applicant has not established any special circumstances that would warrant the cross-examination of the Respondent.

23. Therefore, the application dated 10<sup>th</sup> September 2020 is rejected.

24. However, I order that the costs of the application shall be in the cause.

25. If the Applicant succeeds in the substantive cause, he will also be awarded the costs of the application. However, if the Applicant was ultimately unsuccessful in the substantive cause, he shall pay costs of this application, to the Respondent.

**DATED, SIGNED at DELIVERED at KISUMU This 15<sup>th</sup> day of December 2020**

**FRED A. OCHIENG**

**JUDGE**