



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**SUCCESSION CAUSE NO. 621 OF 1984**

**IN THE MATTER OF THE ESTATE OF AJIT SINGH RIHAL (DECEASED)**

**KULDIP SINGH RIHAL )**

**SUKHVINDER BALJIT SAHIB ).....APPLICANTS**

**VERSUS**

**JASWINDER SINGH RIHAL.....RESPONDENT**

**RULING**

1. By a notice of motion dated 2<sup>nd</sup> April 2019 and filed on 11<sup>th</sup> April 2019, pursuant to Section 1A, 1B and 3A of the Civil Procedure Act, and Section 47 of the Law of Succession, the applicant sought orders as follows:

- (1) That this application be certified as urgent in the first instant and the same be allowed to be heard during the vacation.**
- (2) That this honourable court be pleased to order that the deed of settlement executed by both parties on 30<sup>th</sup> March 2017 be recorded as an order of this court forthwith.**
- (3) That pursuant to Articles 1 (1) (ii) (iv) of the deed of settlement herein this honourable court be pleased to order for payment of interests and costs on the principle sum at 16% pa with effect from 30<sup>th</sup> July 2018 till payment in full i.e. 16% x 50,000,000 = 8,000,000/=.**
- (4) That the respondents be ordered to provide an account for the estate of the late Ajit Singh Rihal (deceased).**
- (5) That costs be provided for.**

2. The application is premised on the ground that, by a deed of settlement made and signed on 30<sup>th</sup> March 2017, both parties agreed for the respondent to pay a sum of 50 million to the beneficiaries of the estate of Harbans Kaur Rihal (deceased) within a period of 15 months from the end of April 2017 (being the end of July 2018).

3. That contrary to the said agreement, the respondent Jaswinder Singh failed to pay the principal sum by 31<sup>st</sup> July 2018 and only paid on 28<sup>th</sup> February 2019. That despite various reminders, the respondent has refused to pay interest for the delayed period.

4. He further claimed that the respondent had failed to account for several properties which he has either fraudulently sold, transferred, mortgaged or interfered with namely;

**(a) LR No. 209/136/245 Rihal House, Tom Mboya Street Nairobi**

**(b) LR No. 209/26/3/3<sup>rd</sup> Parklands Avenue**

**(c) LR No. 1870/1/342 Mua Close Westlands, Nairobi**

**(d) LR No. 1/618 Hurlingham, Nairobi**

(e) LR No. 3734/866 Lavington Jacaranda Avenue, Nairobi

(f) LR No. 12325/9 Spring Valley, Nairobi

(g) LR No. 12325/23 Spring Valley, Nairobi

(h) LR No. 209/2490/39 5<sup>TH</sup> Panipat Road Ngara, Nairobi

(i) LR No. 209/1618/5 5<sup>TH</sup> Parklands Avenue Nairobi

(j) LR No. 209/2/298 Menelik Road Ngong Area Nairobi

(k) LR No. 209/7782 Lavington, Nairobi

(I) LR No. 209/3891 Duruma Road

5. In response, the respondent filed a replying affidavit sworn on 3<sup>rd</sup> May 2019 disputing the claim for interest over the delayed period arguing that the settlement deed had no provision for interest on delayed payment. That he has since cleared payment of the full amount and any claim for interest is not tenable.

6. He further averred that when the court adopted the settlement deed as an order of the court on 12<sup>th</sup> April 2017, there was no reference made to payment of interest. That to allow interest payment will amount to rewriting the agreement. He averred that the delay was beyond his control as the bank from which he was securing credit had delayed in releasing the funds.

7. It was the respondent's claim that this being a family matter he should not be penalized. He claimed that all the other issues having been settled, this court cannot reopen the matter. Finally, he stated that the settlement deed has a provision for settlement of any dispute emanating from the settlement deed through arbitration.

8. I have considered the application herein, supporting affidavit and the response thereto. It is common ground that the parties herein had by a settlement deed dated 30<sup>th</sup> March 2017 agreed to settle the dispute in relation to the distribution of the estate.

9. I note from the proceedings that the settlement deed was adopted as an order of the court. Prayer two of the application is therefore spent and this court cannot adopt it for the second time.

10. At clause 3 (d) it was provided as follows:

**“The executors and beneficiaries representing the estate of the late Ajit Singh Rihal and the estate of the late Harbanas Kaur Rihal and Jaswinder representing the estate of the late Amrik Singh Rihal have disclosed this matter at length and have voluntarily agreed to enter into this deed with a view to finally settling all the matters arising in the said suit and between the estate of the late Ajit Singh Rihal and estate of the late Amrik Singh Rihal”.**

11. The settlement deed was in effect to take care of the application for revocation of grant issued to Amrik Singh where the issue of accounts of the estate was raised. With the signing of the settlement deed and its subsequent execution, all pending issues including rendering accounts of the estate were done away with.

12. At Clause 8, Kuldip Singh Rihal and Sukhrinder Baljit Salma being executors of the estate of Harbanas Kaur Rihal and Surinder Singh Rihal and siblings could not have any claim against the respondent upon execution of the deed and clause. And clause 9 made provision for arbitration of any dispute that may arise from non performance of the deed or interpretation.

13. It is clear from the plain wording of the settlement deed that there was no provision for payment of interest in default of payment. Nothing would have been easier than for parties to state as such. To introduce interest at this stage would amount to inviting the court to rewrite or amend the settlement deed. In any agreement where parties intend to provide for interest, there is always a default clause. In this case there was one. To entertain such a claim would amount to reopening litigation which is already settled. If it was the intention of the parties for the defaulting party to pay interest, it would have been stated.

14. Regarding rendering statement of accounts, the settlement deed is clear that payment of 50 million to the applicant on behalf of the deceased's estate was sufficient settlement of any claim that the applicant would have had against the respondent. Litigation must come to an end. If there is any further claim or breach of the settlement deed, parties should first seek redress before an arbitrator before coming to court. The application is therefore premature.

15. Considering costs, it is not necessary as the applicant had no cause of action in the first place. Therefore each party shall meet his own costs. Accordingly, the application is dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF AUGUST, 2019.**

**J.N. ONYIEGO**

JUDGE