



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
(FAMILY DIVISION)
IN THE REPUBLIC OF KENYA
SUCCESSION CAUSE NO 188 OF 2004
IN THE MATTER OF THE ESTATE OF HABIB JIWAN SUNBERJI (DECEASED)

HANIF HABIB JIWAN.....APPLICANT

VERSUS

ALNOOR HABIB JIWAN

ZAHIR HABIB JIWAN.....RESPONDENT

R U L I N G

1. The application before court seeks for orders to compel the Respondents herein who are Executors of the Will of the deceased to render a true, proper and comprehensive account of their administration of the estate of the deceased and the statement of affairs from the date of the deceased death to date and how the estate was disposed off.
2. The application is predicated on grounds that the Applicant is a son of the deceased who died on the 6th of March 1993, and at the Applicant of the deceased death the applicant was a mere 16 years, further that the Applicant has failed to obtain accounts from the Executors who were fraudulent and breached the trust bestowed upon them by the deceased by investing the estate in their personal names, yet the Applicant is left in the dark, and left in poverty and struggling.
3. The application was opposed by way of grounds of opposition in that the same does not adduce any evidence or legal basis and/or reasonable cause of action to justify or warrant the orders sought; no proof was provided that the Applicant was either a legal beneficiary or otherwise in any way entitled to a share of the estate; the prayers sought are caught up by **Section 4(3)** of the **Limitation of Actions Act**, are time barred by **Section 30** of the **Law of Succession Act**. The action sought has been caught by the doctrine of laches, there was inordinate delay in the filing of the application and the same is an abuse of the due process.
4. There is no dispute that the deceased herein died 26 years ago and probate of his will obtained 15 years ago.
5. Further the deceased left a will wherein he named the Respondents as executors of the said Will and sole beneficiaries of the same with the powers to sell and invest the assets in any manner they deemed fit.
6. The Applicant was nowhere named in the Will either as child or beneficiary of the estate of the deceased. Though he was 16 years at the time of death of the deceased, he was 31 years of age at the time of the application for probate.
7. Secondly, even after coming across the Will the Applicant has not challenged the same and he remains entirely excluded as an heir of the said will.
8. From the foregoing, the applicant has not only failed to prove his beneficial interest or otherwise, he appears to have no basis whatsoever to challenge the discretion bestowed upon the Executors/Beneficiaries of the Will.
9. Further there has been a lapse of 26 years since the deceased passed away and 15 years since the time probate was obtained, the delay is certainly inordinate.
10. Consequently, the application is dismissed each party to meet their costs.

Dated and Delivered in Nairobi on this 26th day of September, 2019

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ALI-ARONI

JUDGE