



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**(FAMILY DIVISION)**

**SUCCESSION CAUSE NO 1346 OF 2016**

**IN THE MATTER OF THE ESTATE OF DAYAKUVAR MAGANIAL PANCHMATIA (DECEASED)**

**SAILESH MAGANLAL PANCHMATIA.....1<sup>ST</sup> APPLICANT**

**RAMILA RAJENDRA PANCHMATIA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**SAILESH MAGANLAL PANCHMATIA.....1<sup>ST</sup> RESPONDENT**

**PRAFUL BACHULAL PANCHMATIA.....2<sup>ND</sup> RESPONDENT**

**I & M BANK LIMITED.....1<sup>ST</sup> INTERESTED PARTY**

**CHOPPIES ENTERPRISES KENYA LIMITED.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. The application subject of this ruling is dated 13<sup>th</sup> May 2019 which mainly seeks to have the 1<sup>st</sup> Interested Party; I&M Bank ordered to pay the 2<sup>nd</sup> Applicant the sum of Kshs.1,244,446.88 being 25% rent for months of October – December 2018, for the 2<sup>nd</sup> Interested Party Choppies Enterprises Kenya Ltd to be ordered to remit all outstanding rents due to the Estate directly to the Applicants' account; for the court to find that the 1<sup>st</sup> Respondent is in contempt of the orders issue of 11<sup>th</sup> October, 2018 requiring that 25% of the rent proceeds of the property subject matter be paid to the 1<sup>st</sup> Applicant pending further orders of the court and; for the court to commit the 1<sup>st</sup> Respondent to civil jail for failing to obey the said orders.

2. The application is based on grounds that the 1<sup>st</sup> Respondent froze the accounts of Prajay & Company; a company formed between him and the 2<sup>nd</sup> Respondent for purposes of collecting rent, paying out goings and sharing the proceeds thereof, and secondly due to the 1<sup>st</sup> Respondent refusal to facilitate the 2<sup>nd</sup> applicants share, stating that the court order of 11<sup>th</sup> October, 2018 is no longer valid.

3. The said application was opposed by the 2<sup>nd</sup> Respondent in a replying affidavit dated 24<sup>th</sup> May 2019. In the said response he admits that rent is paid to Prajay & Company which ought to be distribute the amounts to three persons, however it is his contention that the Estate has incurred expenses which ought to be paid, the expenses include VAT tax owed Kenya Revenue Authority and the auditors fees. is unpaid. Further he states that he is owed the sum of Kshs.416,229.50 by the estate.

4. As for the account of Prajay & Sons he contends that he is frustrated by the 2<sup>nd</sup> Respondent who has failed to make available necessary forms for him to sign to allow operation of the account, he does not speak to the allegation that he froze the account.

5. The 2<sup>nd</sup> Respondent on his part filed an affidavit dated 24<sup>th</sup> May 2019 and confirms Prajay & Company collects rent, pays taxes and other expenses; he confirms the allegation that account No. **007005626411210** with I&M Bank Kisumu has been frozen by the 1<sup>st</sup> Respondent through a letter to the bank dated the 18<sup>th</sup> of July 2018, and as such his 50% share of the rent proceeds is equally withheld.

6. By consent of the parties the Interested Party I&M Bank was released from these proceedings on the 12<sup>th</sup> of November, 2018;

7. The 2<sup>nd</sup> Interested Party is a tenant in the building subject matter and ought not to be dragged in a matter that involves its landlords; who should deal with their affairs on their own.

Consequently, therefore I decline to grant prayer 2 and 3 of the application.

8. I have seen an email from the 1<sup>st</sup> Respondent to the 1<sup>st</sup> Applicant to the effect that the court order of 11<sup>th</sup> October 2018 is not valid.

The above sentiments of the 1<sup>st</sup> Respondent are misguided as the order of the court that 25% of the rent be paid to the beneficiary (the 2<sup>nd</sup> Applicant) named in the deceased will pending further orders of the court remain valid as the court has not issued any orders to the contrary.

9. I accordingly do find the 2<sup>nd</sup> Respondent's action of freezing the account where rent proceeds are paid into and his assertion that the court order is not valid are acts of contempt against this court's order of 11<sup>th</sup> October, 2018 and therefore punishable. For that offence I will fine him Kshs.200,000/= or 2 months jail in default of payment.

10. The Estate of the deceased is an Interested Party holding 25% share of the rent proceeds. In order to avoid a repeat of the above situation and refusal by the 1<sup>st</sup> Respondent to facilitate payments to the beneficiary, I direct that a fresh account be opened in the names of the 1<sup>st</sup> & Respondent, and the 1<sup>st</sup> Applicant or any of the two, in which account the rent proceeds will be remitted beginning December, 2019. Further I direct that the same will be shared in the ratio of 25% the Estate of Dayakuvar Maganlal (for onward transmission to the 2<sup>nd</sup> Applicant), as will be directed by the 1<sup>st</sup> Applicant, 25% to Jay Prakash Panchmatia and 50% to Praful Bachulal Panchmatia (the 2<sup>nd</sup> Respondent) less V.A.T and maintenance costs to be agreed between the parties pending further orders of the court. Any two of the three parties may sign relevant bank documents.

11. The three parties are further directed to consider the monies paid out as tax and auditors' costs for the years 2017 to 2019 refund monies that may have been paid out by anyone of the three behalf of the Estate.

12. The Manager I&M Bank do issue respective cheques upon a letter to be signed by any of the two named above giving details of ratios to be paid out.

13. Costs of this application to be paid by the 2<sup>nd</sup> respondent in any event.

**Dated and Delivered in Nairobi on this 21<sup>ST</sup> day of November 2019.**

.....

**ALI-ARONI**

**JUDGE**