

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2393 OF 2014

IN THE MATTER OF THE ESTATE OF KARAM SINGH BHOGAL (DECEASED)

RULING

1. The deceased herein died on 20th November 1981. Representation to the estate was sought in this cause by a petition lodged herein on 10th October 2014, dated 3rd September 2014, by Ranjit Kaur Bhogal, a widow of the deceased. She listed herself and her daughter, Abdar Kaur Singh, as the sole survivors of the deceased and proposed that grant of letters of administration intestate be made to Surinder Singh Phull, a holder of a power of attorney from her. The petitioner subsequently filed a summons dated 23rd October 2014, seeking a limited grant to enable her collect rent from properties of the estate, principally LR Nos. 2/148, 37/78 and 209/3499, and to thereafter deposit the same in a specified bank account. She also sought orders to restrain Sedco Consultants limited, Harpreet Singh Bhogal and others from collecting rent from the said properties. The said application was placed before me as Duty Judge on 24th October 2014 and I allowed the appointment by limited grant but did not grant the restraining orders.

2. A full grant of letters of administration intestate was eventually made to the petitioner on 27th April 2015. The said grant was confirmed on 12th October 2015 on an application dated 29th July 2015. The estate was devolved upon the administrator absolutely.

3. A summons for revocation of the said grant, dated 27th December 2016, was lodged herein on 28th December 2016 by Devinder Kaur Bhogal, Mohinder Kaur Bhogal and Harpreet Singh Bhogal. They complain that the deceased had four children yet only one of them was disclosed in the proceedings, and that therefore meant that the other three had been disinherited. They also states that one of the assets did not belong to the estate but to a company known as Bhogals Holdings Limited. They states that the grant on record had been obtained by fraud. The matter was placed before me on 29th December 2016 and I granted temporary orders and directed service through substituted service. The publication of the notice prompted other parties to seek to be joined as interested parties having allegedly acquired some interest in estate property through sale by the administrator.

4. During one of the mention of the matter for directions on the disposal of the pending revocation application, an issue was raised that there was a pending succession cause over the same estate, being HCSC No. 650 of 1988. Directions were given that the same be availed. The Deputy Registrar caused the said file to be traced and placed before me, upon which I undertook to peruse through it and thereafter give comprehensive directions on the way forward regarding both matters.

5. I have perused the record in HCSC No. 650 of 1988. The same relates to the estate of Karam Singh. Bhogal s/o Bhur Singh. The cause was initiated by the petitioner and administrator herein, Ranjit Kaur Bhogal, but the name given is Ranjitkaur Karam Singh Bhogal. The petition is dated 14th July 1988 and it is for probate of the will of the deceased who had died in England on 20th November 1981. The petition is supported by two affidavits. One is by one of the persons who attested to the will of the deceased, a Vinakant Muljibhai Patel, and the other is by the petitioner, Ranjitkaur Karam Singh Bhogal, who stated that she believed that the purported will was actually the deceased's true and original last will and testament. The certificate of death attached as proof of death is the same one that is attached to the instant cause. A grant of probate of the written will of the deceased was made to the administrator herein on 6th October 1988. The said grant was confirmed on 29th September 1989, on an application dated 31st August 1989. There is on record a certificate of confirmation of the grant dated 3rd October 1989.

6. Confronted with that development the administrator herein sworn an affidavit on 13th March 2018. She claims to have been informed of the will by her attorney, Surinder Singh Phull, and alleges that she was not aware that the deceased had left a will. She goes on to claim to remember that she was helped by one of her sons to file HCSC No. 650 of 1988 for probate, and after the same was granted she sought confirmation of the same. She claims to have forgotten all about it. She asks that the two causes be consolidated.

7. As it is, the administrator herein holds two grants, a grant of probate made in HCSC No. 650 of 1988 and a grant of letters of administration intestate made herein. Both grants have been confirmed. It is curious that in the petition in the instant cause she did not disclose her three sons, and created the impression that her daughter was the only child she had. There is no doubt at all in my mind that the cause herein, HCSC No. 2393 of 2014 was initiated in abuse of court as the deceased had not died intestate as alleged but testate. Representation over the estate had already been sought and granted, and the said grant had been confirmed. The proceedings herein were a total waste of court's time. I suspect that the same were brought with a sinister motive, but I shall be content to leave it at that.

8. I have been invited by the administrator herein to consolidate this cause with HCSC No. 650 of 1988 the two relate to the same estate. I shall do no such thing. In the first place, the two were commenced by the same person; no reasons have been given for her so doing. I believe the second cause was initiated with ulterior motives and with intent to abuse the court process. Secondly, in one it is alleged that the deceased died testate, while in the other he is said to have intestate. The estate of a person who died partially testate and partially intestate should not be consolidated into one cause, since distribution of the estate would require application of direct rules and different processes. The two causes or files can only be handled together or simultaneously. However, the instant case is not of a person who died partially testate and partially intestate. The deceased herein died wholly testate. His estate should be handled under the law that governs testate succession. There is no justification therefore for consolidation of the two causes herein.

9. Section 76 of the Law of Succession Act, Cap 160, Laws of Kenya, empowers me to revoke a grant on my own motion. That would be the

case in circumstances where the court notes on its own, without prompting by anyone, that a grant had been obtained through a fraudulent process or was so defective as to be useless.

10. The directions that I shall give on the way forward shall be as follows –

(a) That the grant made in HCSC No. 2393 of 2014 shall and is hereby revoked and the cause herein shall be closed and the file removed to the archives;

(b) That the confirmation orders made herein on 12th October 2015 are hereby vacated and the certificate of confirmation of grant issued on the strength of those orders, whether amended or rectified, is hereby cancelled;

(c) That all or any transactions carried out or conducted on the strength of the revoked grant or the cancelled certificate of confirmation of grant are hereby declared null and void;

(d) That henceforth the estate of the deceased shall be dealt with through the proceedings initiated in HCSC No. 650 of 1988; and

(e) That as this is a family matter; each party shall bear their own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 14TH DAY OF JUNE, 2018.

W. MUSYOKA

JUDGE