



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 1491 OF 2017

IN THE MATTER OF THE ESTATE OF GURDIAL KAUR SIHRA (DECEASED)

KULWANT SINGH SIHRA & HARJINDER DHANJIL.....APPLICANTS

VERSUS

SUKHDEV KAUR.....1ST RESPONDENT

MANJIT KAUR CHANNA.....2ND RESPONDENT

JAGJEET SINGH.....3RD RESPONDENT

RULING

1. Gurdial Kaur Sihra whose proceedings the estate herein relate died intestate on 21st October 2017 while domiciled in Kenya leaving behind several assets whose estimated value is Kshs.1.78,000,000. Listed under form P & A 5 as survivors to the deceased are:

- (1) Kulwant Singh Sihra (Son 62 years old)**
- (2) Bhambra Kalvinder Kaur Dhanwant Singh alias Kulwinder Kaur Bhambra (Daughter 62 years old)**
- (3) Harjinder Kaur Dhanji (Daughter 59 years old)**
- (4) Sukhdev Kaur Sihra (Daughter 56 years old)**
- (5) Manjit Kaur Chana (Daughter 55 years old)**
- (6) Charanjit Kaur Supinder Sagoo alias Charanjit Kaur Sagoo (Daughter 53 years old)**
- (7) Jagjeet Singh (son of Tarlok Singh Sihra)-(Grandson aged 43)**
- (8) Harpreet Singh Sihra (Son of Tarlok Sihra) (Grandson aged 39 years)**

2. On 14th December 2017, Jagjeet Singh (grandson), Sukhdev Kaur (daughter) and Manjit Kaur Chana petitioned for a grant of representation. However, before moving any step further, Kulwant Singh Sihra the only son to the deceased lodged an objection dated 1st February 2018 and filed on 2nd February 2018 through the firm of C.M. Advocates opposing the making of a grant to the Petitioners/Applicants.

3. The objection was predicated on the grounds that he was a beneficiary to the estate and the eldest son to the deceased who's beneficial and vested interest comes first in order of preference and or primarily against those of the grandchildren. Subsequently, on 28th February 2018, Kulwant Singh Sihra (objector) and his sister Harjinder Kaur Dhanji filed a cross petition (cross application) for grant of representation. Consequently, the Cross Petitioners on 15th March 2018 filed Chamber Summons dated 14th March 2018 together with a petition seeking grant of representation in their joint names as Administrators instead of the original Petitioners.

4. The prayers sought in the said summons sought an injunction restraining the Respondents (original petitioners) from transferring,

disposing, selling or in any way intermeddling with the estate of the deceased, interim orders directing that the applicants do collect rental income in respect to part of the estate, an order restraining Jagjeet Singh from collecting rent from various properties belonging to the estate, issuance of a limited grant to the petitioner for purposes of collecting rental income in respect of the some properties comprising the estate and an order directing that rental income generated from some of the properties be deposited in a joint interest earning account pending issuance of a confirmed grant.

5. The Application was premised upon grounds on the face of it and affidavit in support sworn on 14th March 2018 by the Applicants (objectors). It is the Applicants' case that being the biological children to the deceased, they had a right in order of priority pursuant to Section 66 of the Law of Succession to petition for a grant of representation and that Jagjeet Singh their nephew being a grandson to the deceased is ranked below them hence cannot take out a grant in respect to their mother's estate when they are alive. That the original petitioners have been wasting and intermeddling with the estate by collecting rent which they do not account for; that Jagjeet Singh (grandson) faked a Power of Attorney and attempted to sell a property of the Estate situated at Spring Valley being LR No. 12325/79 but was discovered in good time and had the same revoked; lastly, that the original petitioners did not secure consent from all beneficiaries entitled to a share of the estate.

6. In response to the cross-petition, the original Petitioners (Respondents) on 18th March 2018 filed answer to cross-petition and affidavit in support to the petition for grant claiming also that they were children to the deceased and therefore beneficiaries. They also claimed that they had been proposed by a majority of the beneficiaries and that the cross-petition was filed in bad faith.

7. The Respondents (original petitioners) contended that the 1st cross-Petitioner (Applicant) was not fit to be an Administrator as he had filed several cases against the deceased and other family members before various courts and that those cases are still pending hence he cannot defend the estate by substituting the deceased mother (defendant) wherein he is the plaintiff in that suit hence conflict of interest. A bundle of proceedings marked (A1) among them ELC Case No. 216/2013 Nairobi where Kulwant Singh Sihra and Sihra Engineering Ltd are the plaintiffs against Jagjeet Singh Sihra deceased as the defendants.

8. Further, the Petitioners (Respondents) averred that Jagjeet Singh although a grandson has been the engine of the Estate in managing and overseeing its operations and smooth running and that the deceased had directed for his provision having taken care of her during her sickness.

9. In response to the answer to cross petition, the Cross petitioners filed a further affidavit seeking to strike out the affidavit in answer to cross-petition sworn by Sukhdev Kaur Sihra on 18th April 2018 a date that she was not in the country yet she purported to have sworn the same before a Commissioner for Oaths in Kenya. Further, he deponed that Harjinder Kaur and Manjit Kaur Chana are not domiciled in Kenya as they are residents of United Kingdom and therefore will not be in a position to administer the estate.

10. On 21st March 2018, application dated 14th March 2018 was withdrawn by the Cross Petitioners and the status quo maintained. On 30th April 2018, the court gave directions for the objection to be canvassed by way of affidavit and oral evidence. When the matter came up for hearing, both counsels adopted their respective affidavits in support of their petition and or cross petition. Miss Shaban for the 2nd and 3rd Original Petitioners and M/s Ndungu for the 1st Original Petitioner adopted their affidavit in support to the petition and answer to cross petition. On the other hand, M/s Mwangi for the objectors equally relied on the affidavit in support of the Cross Petition and further affidavit in response to answer to cross petition.

11. I have considered the petition (application) herein, affidavit in support, cross petition and affidavit in support plus answer to cross petition. The only issue that emerges for determination is; who is entitled to take out the grant of letters of administration intestate in respect to the deceased's estate? Save for the 1st Original Petitioner Jagjeet Singh who is a grandson to the deceased, the rest are children to the deceased.

12. The law governing appointment of administrators to the intestate estate is Section 66 of the Law of Succession. This provision provides that:

“when a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concern, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference:

(a) Surviving spouse or spouses, with or without association of other beneficiaries;

(b) Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;

(c) Public Trustee; and

(d) Creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the Will.

13. From the wording of the provision quoted above, the court has unfettered discretion to determine and or appoint an administrator or personal representative of the estate who shall then be its agent in administering and accounting for the estate until completion of the administrative exercise. However, despite that discretion, the court is guided as to the order of preference in making its determination or

appointment of personal representatives. As correctly stated by the objectors, in the order of ranking, a spouse comes first and in his or her absence, his or her adult children. In this case, there is no spouse. In the circumstances, the next in rank in order of preference or priority is the children. Save for Jagjeet Singh, the rest of the Petitioners and Cross Petitioners are children hence at bar in terms of ranking.

14. Ordinarily and unless there are exceptional circumstances or good reason advanced to the court, a surviving spouse or children have priority over all other heirs of the Estate of the deceased in terms of the right to administration and shares in the Estate (**See in the matter of the estate of Aggrey Makanga Wairira Mombasa High Court Succession cause No. 89/1996**). It therefore follows that, Jagjeet Singh a grandson ranks below the Co-Petitioners and Cross Petitioners. I have not been sufficiently persuaded by the Original Petitioners that Jagjeet Singh a grandson should come on board as an Administrator of the Estate when there are adult children of sound mind. To that extent Jagjeet Singh is disqualified from being appointed as an Administrator of the estate

15. Having removed the grandson, I am left with two daughters who are the Original Petitioners and the Cross Petitioners who are son and daughter respectively. Under Section 56 (1) (b) of the Succession Act, a court can appoint up to a maximum of 4 Administrators to administer an estate.

16. However, the Original Petitioners claimed that Kulwant Singh Sihra the only son to the deceased is not suitable given that he had been given his share by the deceased during her lifetime and that he has no beneficial interest in the Estate. I find that argument premature as the court has not reached the stage for confirmation of grant and distribution of the estate. Appointment of an Administrator does not translate automatically to being a beneficiary of the estate (**See in the matter of the estate of Fatuma Binti Mwanzi Chumvi (deceased) Nairobi H.C. Probate and Administration No. 21 of 1994**).

17. Who then among the four remaining children does not qualify to be appointed as an Administrator or Administratrix? According to the Original Petitioners, the 1st Cross Petitioner, Kulwant Singh has cases filed against him as a defendant in relation to the estate's property or as a plaintiff against the deceased hence conflict of interest in case he is appointed as an Administrator. Counsel for Kulwant Singh admitted that in some cases Kulwant was a litigant against the deceased. Learned counsel was however quick to add that in case Kulwant is appointed as the Administrator, he will withdraw from the pending cases.

18. It is trite that among the duties an Administrator is supposed to perform is to protect, collect and preserve the Estate and in case of a suit defend or institute one for and on behalf of the estate. In the instant case, the 1st Cross Petitioner (Objector) is a litigant in ELC case No. 216/2013 where he sued his late mother (deceased) and Jagjeet Singh. The suit is still pending. What will happen if he were appointed as an Administrator? How will he balance the two interests where one is a plaintiff and at the same time the defendant by virtue of being an Administrator? It is my finding that there will be a conflict of interest if Kulwant Singh (1st Objector) is appointed an Administrator.

19. For those reasons, Kulwant Singh Sihra is disqualified in the interest of justice. Having held as such, I am left with the three daughters. Kulwant claimed that Sukhdev Kaur and Manjit Kaur Chana are residents of United Kingdom hence will not be able to administer the Estate. According to their affidavits in support of the petition, the two sisters stated that they are Kenyan adults and domiciled in Kenya. Nothing stops an Administrator from having two homes both in Kenya and outside. It will depend on how one balances his or her responsibilities. When that time of inability to administer the estate arises, the court will not hesitate to take necessary steps to substitute them. Accordingly, I am inclined to find that the three remaining sisters are qualified and entitled to administer the Estate of their late mother. To that extent, the objection herein partly succeeds and fails with orders as follows:

- (a) That Sukhdev Kaur, Manjit Kaur Chana and Harjinder Kaur Dhanjil do petition the court for a full grant of representation in respect of the deceased's Estate jointly and thereafter facilitate gazettelement of the estate.**
- (b) That letters of administration intestacy shall upon gazettelement issue to the three sisters named in (a) above.**
- (c) That the Sukhdev Kaur Sihra, Manjit Kaur Chana and Harjinder Kaur Dhanjil shall collect and preserve the estate pending confirmation and distribution of the estate.**
- (d) That the Petitioners herein shall immediately open a joint interest earning account to which all rental income accruing to the Estate and or other sources of income shall be deposited.**
- (e) That the three joint Petitioners in consultation with other beneficiaries shall agree on the necessary operational expenses and or sufficient management expenses in default a proposed mode of expenditure be submitted to the Deputy Registrar Family Division for approval.**
- (f) That the three Petitioners/proposed Administrators shall keep proper records and maintain proper accounts in respect of the Estate.**

Order accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF SEPTEMBER, 2018.

J.N. ONYIEGO

JUDGE