



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**PROBATE AND ADMINISTRATION CAUSE NO. 20 OF 2006**

**IN THE MATTER OF THE ESTATE OF JASWANT SINGH BOOR SINGH DHANJAL  
(DECEASED) OF MOMBASA**

**JOGINDER SINGH DHANJAL .....RESPONDENT**

**VERSUS**

**DHANJAL BROS LIMITED ..... INTERESTED PARTY/APPLICANT**

**RULING**

1. The deceased to whose estate the proceedings herein relate is Jaswant Singh Boor Singh Dhanjal who died on 26.10.04. From the record, the deceased was survived by the Respondent herein and his four siblings. The estate of the deceased comprised *inter alia* 1125 shares in the Interested Party/Applicant herein. A Grant of Letters of Administration Intestate was issued to Daljit Singh Dhanjal one of the sons of the deceased on 10.8.06 and confirmed on 20.4.07. The Certificate of Confirmation issued on 26.4.07 indicates that the estate of the deceased was to be divided equally among the five children of the deceased.

2. The Respondent filed Summons for Revocation of the Grant dated 10.3.15 on the ground that the same was obtained fraudulently through concealment of material facts the key fact being that Daljit Singh Dhanjal the Administrator had entered into a Settlement Agreement dated 9.3.06 where he disposed of properties of the deceased.

3. Contemporaneously with the Summons for Revocation of grant, the Respondent filed an Application dated 10.3.15 under certificate of urgency seeking in the main, a declaration that the Settlement Agreement of 9.3.06 is null and void and the nullification and rescission of the transfer of the properties of the estate that were transferred pursuant to the said Settlement Agreement. This Application was disposed of by way of written submissions which were highlighted before me on 15.12.15 and Ruling was reserved for 17.2.16.

4. In the Application herein dated 16.2.16, the **Interested Party/Applicant seeks to be enjoined in the proceedings herein as an interested party and suspension of delivery of the said Ruling** pending the hearing and determination of the Application. The said Ruling was stayed pending the determination of the Application herein.

5. For the **Interested Party/Applicant** it was submitted that the Respondent, a shareholder and director of the Interested Party/Applicant has filed Winding Up Petition No. 5 of 2014 in the Commercial Court to wind up the Interested Party/Applicant which Petition is still pending. That

certain orders have been made in the winding up cause. That the delivery of the said Ruling without this Court's notice of the matters already disposed of by the Commercial Court, may result in injustice to the Interested Party/Applicant which has not been heard by this Court. That this Court may embarrass itself if it unknowingly rendered a decision which may have the effect of reviewing, staying or setting aside the Ruling of the Commercial Court of 4.12.15.

6. For the Respondent, it was submitted that the **Interested Party/Applicant has no business to be in the cause herein and has not demonstrated a nexus between itself and the succession cause herein. It was further argued that** the orders sought in the succession cause herein if granted will have no bearing in the winding up cause since the orders relate to the Settlement Agreement. That there shall be no embarrassment or hardship caused on the part of the **Interested Party/Applicant.**

7. I have considered the Application and the submissions by counsel. It is not disputed that the **Interested Party/Applicant is not a beneficiary of the estate of the deceased. The declaratory and conservatory orders sought in the Application dated 10.3.15 relate to properties and shares of companies other than the Interested Party/Applicant. However, there is sought in the said Application a declaratory order nullifying the Settlement Agreement of 9.3.06. The deceased owned shares in the Interested Party/Applicant. The Interested Party/Applicant is a party in the Settlement Agreement dated 9.3.06. It is a cardinal principle that the court will not make an adverse order without hearing the party to be affected by it. In Union Insurance Co. of Kenya Ltd. Vs. Ramzan Abdul Dhanji Civil Application No. Nai. 179 of 1998 the Court of Appeal held:**

*“Whereas the right to be heard is a basic natural-justice concept and ought not to be taken away lightly... The law is not that a party must be heard in every litigation. The law is that parties must be given a reasonable opportunity of being heard...”*

8. In Meme v Republic [2004] eKLR 637 the Court considered the following factors that may lead to joinder of a party in proceedings. The Court considered whether presence of a party will result in the complete settlement of the questions involved in the proceedings; whether joinder will provide protection for the rights of the party who would otherwise be adversely affected in law; and whether joinder will prevent a likely course of proliferated litigation.

9. It is clear that the Settlement Agreement dated 9.3.06, which is the subject of the Application by the Respondent herein dated 10.3.15, involved the shares owned by the deceased in the **Interested Party/Applicant. The Settlement Agreement further involved properties owned inter alia by the Interested Party/Applicant. It is therefore likely that orders made by this Court in the said Application dated 10.3.15 may adversely or otherwise affect the Interested Party/Applicant. It is the view of this Court that the joinder of the Interested Party/Applicant in this cause will assist the Court in the complete settlement of the questions raised in the proceedings herein. The joinder will further afford protection for the rights of the Interested Party/Applicant who would otherwise be adversely affected in law. Additionally, the joinder of the Interested Party/Applicant will prevent a likely course of proliferated litigation.**

10. For the reasons stated above, it is in the interests of justice that the **Interested Party/Applicant be given a reasonable opportunity of being heard in the succession cause herein. The Respondent will suffer no prejudice by reason of the Interested Party/Applicant being so enjoined. Consequently, the Application dated 16.2.16 is hereby allowed as prayed.**

DATED, SIGNED and DELIVERED in MOMBASA this 16<sup>th</sup> June, 2016.

M. Thande

Judge

**In the presence of: -**

..... **for the Interested Party/Applicant**

..... **for the 1<sup>st</sup> Set of Interested Party**

..... **for the 2<sup>nd</sup> Set of Interested Party**

..... **for the Respondent**

..... **Court Assistant**