



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO.1284 OF 2015
IN THE MATTER OF THE ESTATE OF RAJNI VALLABHDAS KARIA (DECEASED)

RULING

PLEADINGS

By an Application dated 21st October 2015, brought by the Applicant, Ketan Morjaria, son in law to the deceased, he sought revocation of grant of probate issued by this Court on 1st September 2015 to Jay Karia son of the deceased, based on the deceased's Will dated 22nd July 2005 which was written in Kenya.

The Application is brought under **Section 76 of the Law of Succession Act Cap 160**; that the grant was obtained through concealment of material facts and fraudulent means. The Applicant was aware and ought to have disclosed that the deceased wrote a subsequent Will dated 15th October 2008 in England and he revoked all other wills. The deceased appointed both the Applicant and Respondent as joint executors of his Will.

By Replying affidavits by Hemlata Rajnikant Karia, widow of the deceased and Jay Rajnikant Vallabhdas Karia (herein referred to as Jay Karia) son of the deceased filed on 12th January 2016, they deposed that they were aware of the 2 Wills and only chose the 2005 Will to expedite matters and distribute the deceased's estate. In both Wills the main beneficiary is the deceased's widow and the Respondent is an executor in both Wills.

They alluded to the fact that the Applicant conducted business with the deceased and is in possession of ownership documents of certain properties that the Applicant ought to disclose and ensure the widow of the deceased benefits from the same. The Respondents conceded to have the Will of 2008 to take precedence to save time and expense. The Applicant recanted the allegations by the Further Affidavit filed on 26th January 2016.

On 7th June 2016 Counsel for the Applicant and Respondents informed this Court that the instant Application for revocation of summons was compromised by the parties consent to set aside, revoke and annul this Court's grant of 1st September 2015. This Court accepted their consent as an order of this Court.

ISSUE

1. Should this Court hear and determine the question of jurisdiction now that the grant is revoked?

SUBMISSIONS

The Applicant argued through Counsel that the deceased was domiciled in Uganda and has properties in Kenya, Uganda, England and India. The Applicant and Respondent sought legal advice from lawyers in Uganda who proposed the grant of probate be processed in Uganda.

The Respondent applied for grant of Probate in Kenya as the Will of 2005 was drawn in Kenya and some properties are in Kenya. He was also a beneficiary in the revoked Will but not the one of 2008 where his mother and widow to the deceased is sole beneficiary of the estate. As it is, the Applicant and Respondents are unable to agree on the choice of forum and choice of law. The Applicant submitted through Counsel that as a result of the annulment of the grant and Will of 2005, this Court is enjoined to determine the proper forum in light of the prevailing circumstances. The Applicant relied on the principle of *forum- non-conveniens*. This is where a matter transcends the Jurisdiction of one country; the presiding Court may defer proceedings to the forum that is convenient to all parties. The Applicant informed this Court that Kenya is the proper forum (court) convenient to all parties and especially because there is the process of resealing of grants for properties in Kenya where the grant is issued in another country.

Counsel for Respondents informed this Court, that since the grant issued by this Court is revoked, the Court has not been properly moved to hear and determine the issue of jurisdiction as what the Court dealt with was the validity of the grant issued and now revoked. This Court cannot at this stage determine the issue of *forum non conveniens*. The widow of the deceased resides in UK, bulk of assets is in UK and advice sought in Uganda was not mandatory. There is a Petition in this Court and the Executors may decide the appropriate forum to the convenience of parties. This Court cannot decide the question of jurisdiction and if parties want the Court to do so, they shall file appropriate application and ask the Court to determine the same.

This Court makes the following observations;

1. The deceased was a citizen of UK, he died in UK and the bulk of the properties that comprise of the estate of the deceased are in the UK. The deceased's widow and son reside in UK. The valid Will dated 15th October 2008 was drawn in England.
2. The deceased's daughter and son in law reside in Uganda. The Deceased's estate comprises of assets in Kenya, Uganda, England and India.
3. The pleadings before this Court were to revoke the grant issued by this court on 1st September 2015 of the Will dated 22nd July 2005 which parties agreed by consent through their advocates to set aside, revoke and annul.
4. The Court is bound to hear and determine disputes as presented by the pleadings; there is no formal application to hear and determine the issue of jurisdiction; the most appropriate forum and convenient forum for all parties to process the grant of probate to the deceased's estate.
5. The principle of *forum non conveniens* allows Courts discretion to defer court proceedings to a Court whose forum is more appropriate, available and convenient to all parties.
6. In the instant case, from the pleadings there is no consensus or agreement between the parties as to the choice of forum and choice of law to hear and determine the grant of probate of the estate of the deceased.
7. In the instant case, the submissions by Counsel have been from the Bar on the question of jurisdiction. The Court accords each and every party presenting himself or herself before the Court to be heard and thereafter the Court can pronounce itself on the matter based on the merits of the case.

DETERMINATION

Section 2 of the Law of Succession Act prescribes universal application of the said law on all testamentary and intestate estates after 1981.

Section 16 of the Law of Succession Act recognizes formal validity of Wills drawn out this country and

the law in force where the Will was executed, where the deceased died, where he was a national, where he was domiciled or where the properties are situated.

Rule 30 of Probate and Administration Rules prescribes that where evidence of law of a country outside Kenya is required on any application for a grant, the same may be deposed in an affidavit by any person who practices as a barrister, solicitor or advocate of the court outside Kenya.

Rule 42(1) of Probate & Administration Rules grants resealing of grants issued in another country of properties forming part of the deceased's estate that are situated in Kenya.

From the above -cited provisions Kenyan Law is flexible due to its universal application to process grant of probate or facilitate access to property in Kenya that is part of the estate by resealing the grant issued in another country.

COURT ORDER

The parties submitted to the jurisdiction by virtue of the revoked grant of 22nd July 2005 drawn in Kenya. However, the choice of forum ought to be agreed upon by the joint executors of the now valid Will of 15th October 2008; whether to submit to the Court's jurisdiction and proceed with distribution of the deceased's estate based on the existing valid Will or petition for grant of probate in UK where the Will was drawn or petition in Uganda where part of the estate is situated. In the absence of agreement by the parties this Court will not impose its position. This Court will hear and determine the issue if and when a formal application is filed and served to request the issue of jurisdiction be resolved.

READ AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14th DAY OF JUNE, 2016

MARGARET W. MUIGAI

JUDGE

In the presence of;

Mr. Naribo holding brief for Clive Mshweshwe

Mr. Kuyo for the Respondent