



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION--
SUCCESSION CAUSE NO. 205 OF 2015
IN THE MATTER OF THE ESTATE OF TARLOCHAN SINGH RAI (DECEASED)
BETWEEN
JASBIR SINGH RAI.....1ST APPLICANT
IQBAL SINGH RAI.....2ND APPLICANT
AND
JASWANT SINGH RAI.....RESPONDENT
RULING

1. In an application dated 21st August 2015, the applicants Jasbir Singh Rai and Iqbal Singh Rai sought that the respondent Jaswant Singh Rai be ordered to produce before Court the Last Will and Testament of Tarlochan Singh Rai (hereinafter referred to as the deceased). In the grounds and supporting affidavit it was stated that the applicants and the respondent were some of the dependants of the deceased; the others being Sarjit Kaur Rai (widow), Hertej Ashwin Oza (daughter), Daljit Kaur Hans (daughter) and Sarbjit Singh Rai (son). The applicants stated that the deceased was their father who died on 28th December 2010 and left a Will; and that the Will is in the possession of the respondent who, despite several requests, has refused to produce or have it read. He has also not applied for the grant of probate. They sought the production of the Will. The application was brought under **rule 24(1)** of the **Probate and Administration Rules** of the **Law of Succession Act (Cap. 160)**.

2. The respondent filed a replying affidavit in which he agreed that their late father (the deceased) indeed left the Will in which he was named as the sole executor. He annexed a copy of the Will ("JSR 2"). He stated that he was in the process of applying for the grant of probate. Lastly, he made reference to a long standing dispute in the family over the distribution of some of the companies in which the applicant had joint shareholding with some of the members of the family, including the deceased.

3. The parties filed written submissions in the application. The submissions of the applicant were filed by Judy Thongori & Co. Advocates and those of the respondent were filed by Oraro & Co. Advocates. In the applicants' submissions the applicants sought not only the Will but also an order compelling the respondent to apply for the grant of probate. As far as the respondent was concerned, the annexed copy of the Will was sufficient answer to the application, which application is now spent. On the issue of

being compelled to seek grant of probate, he responded that that was not one of the prayers in the summons. Relying on the decision in **Galaxy Paints Co. Ltd -v- Falcon Guards Ltd [2000] 2EA 385**, he contended that the court could not give an order not sought in the application.

4. The respondent is in possession of the deceased's Last Will and Testament in which he is the sole Executor. Under **rule 24(c)** of the **Probate and Administration Rules** he is hereby ordered to bring into this Court that Will in its original form within 30 days from today. The rule does not talk of a copy of the Will, and therefore the annexed document ('JSR 2") cannot replace the Will.

5. As regards the request by the applicants that the respondent be compelled to apply for the grant of probate, I agree with the respondent that this was not one of the prayers in the summons under consideration. The applicants can only get the order they sought. In any case, there is a pending citation that was filed in this matter on 3rd February 2015. It relates to the request now being made.

6. I ask that the costs of this application be borne by the respondent.

DATED and SIGNED at NAIROBI this 12th day of AUGUST 2016.

A.O. MUCHELULE

JUDGE

DELIVERED and SIGNED this 17th day of AUGUST 2016

W.M. MUSYOKA

JUDGE