



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 2340 OF 2012
IN THE MATTER OF THE ESTATE OF AMAR KAUR MATHARU– DECEASED
TARLOCHAN SINGH MATHARU.....APPLICANT
VERSUS
SURINDER KAUR DEVGUN..... RESPONDENT

RULING

1. The deceased AMAR KAUR MATHARU died on 5th April 2012 in Nairobi. She was survived by eight children who included the applicant and the respondent. On 1st October 2012 the respondent petitioned the Court for the grant of letters of administration intestate. The applicant and his brother KAMALJEET SINGH MATHARU filed a notice of objection dated 23rd April 2013 and affidavits challenging the application. Their case was that their father JAGAT SINGH MATHARU had died leaving a Will in which he had bequeathed his entire estate to his wife, the deceased herein, but that no application for grant of probate was ever made; that the respondent had filed the present application without informing them, or seeking their consent or approval; and that they are of the Sikh community whose customs cannot allow the respondent, a married daughter, to inherit the estate of the deceased or to administer it.
2. The respondent applied to have the notice of objection and affidavits struck out and expunged from the record. The primary ground was that the notice had been filed out of time. The matter was heard by my brother Justice Musyoka who, on 31st January 2014 agreed with the respondent and ordered the notice and affidavits struck out and expunged from the record. He ordered that the grant of letters of administration intestate be issued to the respondent.
3. On 9th May 2014 the applicant and his brother filed an application for the revocation and or annulment of the grant on the grounds that they had not been informed (and their consent sought) before the petition was filed: a fraudulent consent had been filed to support the petition; the petition had not included all the assets of the deceased; and that the respondent had failed to disclose that the deceased had left a written Will. On 6th June 2014 the respondent applied to have the grant issued to her on 31st January 2014 confirmed. The two applications have not been heard and determined.
4. On 7th August 2014 the applicant filed the present application under **sections 51, 52, 70 and 76** of the **Law of Succession Act (Cap 160)** and **rule 24** of the **Probate and Administration Rules** to

have MR. K.S. BHULLAR, advocate for the respondent, to be summoned into Court to produce the written Will that the deceased left relating to the estate. He sought that the advocate be examined and interrogated on the Will. His case was that on 17th April 2014 the advocate had done an email correspondence to all the beneficiaries informing them that the deceased had left a written Will. Such Will had not been exhibited at any time leading to the respondent being granted letters on the basis that the deceased had died intestate. He had sought from the advocate a copy of such a Will but it had not been made available.

5. MR K.S. BHULLAR filed a replying affidavit to say that at the time when he filed the petition for the respondent he was not made aware of the existence of the Will. He stated that the respondent first informed him about the Will in April 2004 and that was when he informed the beneficiaries. He had not personally seen the Will but had been informed by the respondent that it related to only one property in India which the deceased had bequeathed to her (the respondent). It had been drafted by an advocate in India. He stated that he cannot be made to produce a Will that he has not seen.

6. The respondent swore an affidavit in response to the application. She stated that indeed the deceased had bequeathed House No 8 Parchowal Road, District of Ludhiana, Punjab, India to her through a Will whose copy ("SKD 2") she annexed. It was dated 23rd April 2010. This is what she said in paragraphs 7 and 8 of the affidavit:-

"7. THAT my deceased mother namely Amar Kaur Matharu told me she had a Will which was drafted by a lawyer in India regarding House No. 8 Parchowal Road, District of Ludhiana, Punjab India however I had never seen the said Will at the time of filing the Petition for letters of Administration intestate but upon subsequent visit to India I managed to get an English translated version of the said Will which is annexed herewith and marked SKD 2.

8. THAT on learning that the House No. 8 Parchowal Road, District of Ludhiana, Punjab India had already been fraudulently sold to third parties I lost interest on the said property which was bequeathed to me as per the Will."

7. The applicant swore a supplementary affidavit to say that the respondent had failed, at the time of filing the petition, to disclose the existence of the will. He swore that the advocate was duty bound to bring to the attention of the beneficiaries that the deceased had died testate, and should therefore be made to produce the Will for its validity to be inspected and/or contested by the beneficiaries.

8. It is clear that the Will did not relate to the rest of the properties that the deceased left.

9. Parties filed written submissions on the applicant's application. I have anxiously considered this application. It is clear that the issue of the Will has also been raised in the application for revocation and/or annulment of the grant that was issued to the respondent on 31st January 2014. The grant is also challenged on other grounds. The applicant is, in my understanding, challenging this grant through the present application.

10. In order to do substantial justice to the dispute, I direct that the application for revocation and/or annulment that was filed on 9th May 2014 be heard on 11th February 2015. The parties are given 7 days each to file written submissions on the application. In the meantime, the present application is declined with no orders as to costs.

DATED and DELIVERED at NAIROBI this 27th January 2015.

A.O. MUCHELULE

JUDGE

