



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

SUCCESSION CAUSE NO. 259 OF 2010

IN THE MATTER OF THE ESTATE OF JAGJIT SINGH AHLUWALIA (DECEASED)

NAUSHAD AHLUWALIA JAGJIT APPLICANT

VERSUS

THE MANAGER CONSOLIDATED BANK, MURANG' A RESPONDENT

RULING

THE APPLICATION

[1] By chamber summons dated 18th October 2013, the administrator of the Estate of the Deceased herein, Naushad Ahluwalia Jagjit Singh, to whom a confirmed grant was made on 20th August 2013 sought orders for provision of statement of accounts and for payment of monies in the named accounts as follows:

a. THAT the manager of Consolidated Bank Murang'a do provide statements:-

i. Saving Account No. 01302202403300

ii. Current Account No. 0120020274900

iii. FDR Account.

b. That the manager Consolidated Bank Murang'a to transfer all monies in Saving Account No. 0130220240300, Current Account No. 0120020274900 and FDR account.

[2] The application was supported by the applicant' s Supporting Affidavit and Further Affidavit sworn respectively on 23rd October 2013 and 28th November 2013. In reply the Respondent through its Branch Manager, Ms. Ruth Mataaru filed a Replying Affidavit and Supplementary Affidavit respectively sworn on 28th October 2013 and 11th March 2014.

[3] The parties subsequently filed respective written submissions and on 3rd March 2013 ruling was reserved for the 27th May 2015.

ISSUES FOR DETERMINATION

[4] The first prayer of the chamber summons dated 18th October 2013 for provision of statements of accounts has already been dealt with through the Supplementary Affidavit of Ms. Ruth Mutaaru, the Manager of the Respondent, which annexed the statements on the said Accounts.

[5] The issue that remains for determination therefore is whether the three accounts in question belong to the Deceased and whether the funds held in those accounts will be transferred to the administrator of the Estate of the Deceased as prayed.

DETERMINATION

[6] I have considered the matter and found that there is no dispute as to the ownership by the Deceased of Savings Account No. 0130220240300, which had as at 30th October 2010 a credit balance of 6,873.00/- according to statement of accounts presented by the Respondents. The Respondent has declared willingness to pay out to the Administrator of the Estate the amount of Ksh.6033/-, being the amount of outstanding balance left unclaimed after the death of the Deceased, and subsequently transferred to unclaimed balances in August 2011.

[7] The ownership of the Current Account is disputed with the applicant administrator relying on an undated handwritten note annexed as NAJ 2 to the Further Affidavit of the Applicant sworn on 28th November 2013, which shows A/C 012 0020274900, current account Ksh.299,963.68/- and FDR Account bal. 17,534,037.30/- . In the narrative introducing the exhibit NAJ2 at paragraph 6 of the Further Affidavit, the applicant argues –

“That the Respondent issued a balance statement of account no. 01220020214900 and of FDR Account to the deceased indicating that the accounts belong to the Deceased. (Annexed hereto are copies of the balance statements marked NAJ 2).”

[8] In reply to this contention, the Respondent’s Manager aforesaid in her Supplementary Affidavit of 11th March 2014 is categorical that the Account in dispute did not belong to the Deceased and she attaches statements on the two accounts to prove this. At paragraph 4 of the said Affidavit she states –

“That as earlier stated in my affidavit of 28th October 2013, Account No. 0120020274900 did not belong to the Deceased herein. The truth of the matter is that the said Account belonged to Mrs. Surjit who had a fixed deposit Account with the Bank in the year 2007 under Account Number 0110320274904. I annex herewith and mark as annexure RM-1 (a) and (b) respectively copies of the statements of Account in respect of the two Accounts.”

[9] In his written submissions, counsel for the applicant bases his claim to the ownership of the two accounts and monies held therein, as part of the estate of the Deceased, merely on the fact of alleged possession by the Deceased of balance statements with respect to the accounts, as follows:

“Current Account No. 0120020274900 also belongs to the Estate as the Deceased had in his possession prior to his death, balance statements issued by the respondent if at all the account did not belong to the Estate, then the Deceased would not have access to the balance statement as indicated by the Respondent, it would be illegal to disclose details of the statement to anyone else but the account owner – the same applies to the FDR as the deceased had in his possession balance statements issued by the Respondents. ”

[10] To be sure, the undated handwritten balance statements are not addressed to the Deceased and they do not show who the owners of the accounts were, and it is difficult in the circumstances, as sought by the applicant, to hold that the two Accounts – Current Account 0120020274900 and the Fixed deposit Account (whose number is not shown on the handwritten balance statement NAJ2) belong to the deceased. There is no evidence that the alleged balance statements were given by the Respondents to the

Deceased. Indeed, it is not clear that the alleged handwritten statements are the documents of the respondent, there being no seal or stamp to authenticate them.

[11] On a balance of probabilities, I accept the statements on the matter of the ownership of the Accounts and the transactions thereon as given by the Bank manager, which in terms of section 176 of the Evidence Act are prima facie evidence of the state of affairs in the accounts. Section 176 of the Evidence Act provides –

176. Subject to this Chapter a copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of such entry, and of the matters, transactions and accounts therein recorded.

[12] There is no credible evidence to rebut the *prima facie* evidence that the two Accounts - Current Account No. **0120020274900** and the FDR Account No. **0110320274904** - belonged to Mrs. Surjit Kaur Ahluwalia as shown in the statements of accounts thereon produced by the Bank. In the absence of such evidence and the said Mrs. Surjit Kaur Ahluwalia not having been made a party to this application, the Court cannot make the orders sought by the applicant herein.

ORDERS

[13] Accordingly, the Applicant's Chamber Summons dated 18th October 2013 is granted to the extent only that the respondent Bank provides full and accurate accounts on the Deceased's Savings Account No. **0130220240300** and transfers to the applicant/administrator of the estate of the Deceased such sums as remain to the credit of the Deceased in the said account.

[14] The prayer for accounts and transfer of the funds in Current Account No. **0120020274900** and Fixed Deposit Account No. **0110320274904** is declined.

COSTS

[15] The application has been partly successful as regards the Savings Account No. **0130220240300**. The applicant as administrator to the Estate of the deceased appear genuinely to have taken the disputed bank accounts to be in the name of deceased and therefore part of the Estate, and was consequently obliged to collect the funds in the accounts as assets of the Estate. I, therefore, do not make any order as to costs.

EDWARD M. MURIITHI

JUDGE

DATED AND DELIVERED THIS 27TH DAY OF MAY 2015.

M. MUYA

JUDGE

In the presence of: -

Mwangara holding brief for Khalib for the Applicant

Paul Buti for the Respondent

Linda Court Assistant.