



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2749 OF 2002

IN THE MATTER OF THE ESTATE OF NAGINDAS RAMJI PARMAR – (DECEASED)

RULING

1. This cause related to the estate of Nagindas Ramji Parmar. He died testate on 11th May 1999, having made a will on 17th October 1980.
2. The said will appoints Madhusudan Nagindas Parmar and Navinchandra Nagindas Parmar execute thereof. The dispositive provisions award the estate to Umiaben Nagindas Parmar, Madhusudan Nagindas Parmar, Navinchandra Nagindas Parmar and Vinaychandra Nagindas Parmar or their the survivors in equal shares.
3. Grant of probate of written will was made to the executors on 10th January 2003.
4. On 11th October 2011 Vinaychandra Nagindas Parmar filed a summons under *Section 26* of the Law of Succession Act asking that reasonable provision be made to him as a dependant of the deceased out of his net estate. I have noted that the affidavit of the applicant sworn on 4th October 2011, does not mention a single word and about reasonable provision.
5. The application has been responded to by one of the executors Madhusudan Nagindes Parmar, by his affidavit sworn on 4th May 2012. He avers that the applicant herein is not entitled to a share in the estate for he was given UK£35,000.00 by their father prior to the latter's death and that that made up his entire inheritance.
6. *Section 26* of the Law of Succession Act states as follows:-

“Where person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of the Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased's estate effected by his will or gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate.”

7. The language of *Section 26* of the Law of Succession Act is very clear. That provision is available for parties who have not been provided for under the will of the deceased or in intestacy. The applicant herein has been provided for in the will of the deceased. He cannot therefore plead that he has been disinherited hence the need to resort to *Section 26* of the Law of Succession Act. I have carefully gone through the affidavit in support of his application and I see nothing in it which would justify me to exercise discretion in his favour under *Section 26*. The will of the deceased makes provision for him, and

there is nothing in his affidavit to demonstrate that the said provision was inadequate or unreasonable.

8. I have noted the averment by the executor, Madhusudan Nagindas Parmar, that the applicant received a gift of UK£35,000.00 from the deceased after the execution of the will, and that the deceased had told the family that the applicant was to take that amount of money as his inheritance and that he should not claim anything from the estate thereafter. The effect of such remarks, if ever they were made, would be to contradict the clear terms of the will made on 17th October 1980. However, such remarks are of no consequence to the terms of the will so long as they are not contained in a subsequent valid will or codicil, for the terms of a valid written will can only be varied by a subsequent written will or codicil. If the deceased intended to effect changes to his will to exclude the applicant from benefit after giving him UK£35,000.00 as alleged, he should have executed another will or codicil. The fact of the making of the alleged remarks by the deceased should not be an excuse by the executors for failing to distribute the estate.

9. The grant herein was made on 10th January 2003. Under *Section 71(1)* of the Law of Succession Act, after expiry of a period of six months from the date of any grant of representation the holder ought to apply to court for the confirmation of the grant. Under *Section 76(d)(i)* of the Act, failure to apply for confirmation of grant within one year from the date of its making exposes the grant to revocation. It is now well over ten (10) years since the grant was made herein, yet confirmation thereof is yet to be sought. The grant made on 10th January, 2003 is ripe for revocation by this court on its own motion.

10. In the end I make the following orders:-

(a) the application dated 11th October 2011 is totally misconceived and hence it is hereby dismissed,

(b) the executors of the will of the deceased are hereby ordered to apply for the confirmation of the grant made on 10th January 2003 in the next 30 days of the date of this ruling, in default of which the said grant shall stand revoked for failure by the executors to apply for its confirmation within one year of its making,

(c) There shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF January, 2014.

W. MUSYOKA

JUDGE