

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.1270 OF 1989

**IN THE MATTER OF THE ESTATE OF BALBIR KAUR W/O SAWARN SINGH CHANNA
(DECEASED)**

**DALJIT KAUR CHANNA.....
.....APPLICANT**

VERSUS

**TARLOCHAN SINGH CHANNA.....
RESPONDENT**

RULING

The Respondent, Tarlochan Singh Channa is the executor of the Will of the deceased, Balbir Kaur wife of Sawarn Singh Channa. The deceased died on 15th October 1988. Before her death, she had written a Will in which she appointed the Respondent and Surinder Singh Channa, her sons, to be the executors and trustees of her Will. Surinder Singh Channa predeceased her on 4th October 1988. The grant of probate was issued to the Respondent on 22nd October 1990. It was confirmed on 4th February 2008. In her Will, the deceased directed that her properties be shared equally between her two sons. She further stated that if any of her sons were to predecease her, the wife of such son would substitute such deceased's son. Daljit Kaur Channa is the wife of Surinder Singh Channa. According to the Will, she was therefore entitled to inherit the portion of the properties that comprise the estate of the deceased that would have otherwise been inherited by her late husband Surinder Singh Channa (deceased).

The parties in dispute both accept that the bequests made in the Will should be recognized and adopted by the court. The dispute that has arisen is in regard to how a property known as LR. No. 209/2779/4 (Part) (the suit property) is to be shared on the ground between the Applicant and the Respondent. When the parties appeared before this court on 5th February 2013, this court, having identified the issue in dispute to be the determination of the portion of the suit property that should be occupied by each beneficiary, directed a Surveyor to visit the suit property with a view to surveying it and determining the respective areas occupied by the Applicant and the Respondent. The court further directed a surveyor to determine the median point of the property. The cost of the survey was to be shared equally. This court further ordered a Valuer to value the suit property and determine the respective values of the portions occupied by the Applicant and the Respondent.

The Surveyor, Mssrs Midaland Surveys & Estates presented their report to court. The said report is dated 2nd May 2013. According to the Surveyor, the Respondent occupies 132.209 m² of the main building while the Applicant occupies 79.921 m². As regard the parking area, the Respondent occupies 91.2 m² while the Applicant occupies 20.01 m². In the Valuation Reports prepared by Mssrs Zenith (Management) Valuers Ltd, the portion occupied by the Respondent, plus improvements has a market value of Kshs.38 million while the portion occupied by the Applicant has a market value of Kshs.24.8 million. It was clear from both the surveyor's and the Valuer's reports that the Respondent occupies a larger portion of the suit property. As regard the question whether the suit property can be partitioned into equal portions, the surveyor noted that it could be done but would involve part of the building currently occupied by the Respondent being hived off in favour of the Applicant. The surveyor did not state what it would cost for the said partition to be effected.

This court is of the opinion that the only way that it can give effect to the bequests made in the Will

without additional costs, is to compensate the Applicant with the difference of the value between the portions of the suit property currently occupied, respectively, by the Applicant and the Respondent. In the premises therefore, the Respondent is ordered to pay to the Applicant the sum of Kshs.14.8 million being the difference in value of the respective parcel of land that they occupy. The Respondent shall pay to the Applicant the said sum within thirty (30) days of today's date. Normally, this court will not award costs in succession matters because it is a family dispute. But this court has taken into consideration the fact that it is the Respondent's intransigence that was the cause of the dispute. The Respondent that shall pay the cost of the Applicant.

DATED AT NAIROBI THIS 9TH DAY OF APRIL, 2014.

L. KIMARU

JUDGE