



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**SUCCESSION CAUSE 239 OF 2007**

***IN THE MATTER OF THE ESTATE OF CHANAN SINGH SAIMBHI (DECEASED)***

***And***

**INDERJIT SINGH SAIMBHI.....APPLICANT**

**Versus**

**MOHINDER SINGH SAIMBHI HARDEV SINGH SAIMBHI ).....RESPONDENTS**

**R U L I N G**

By an amended summons dated the 28<sup>th</sup> January, 2009 and filed in court on 10<sup>th</sup> February, 2009, **Inderjit Singh Saimbhi**, hereinafter referred to as “*the applicant*” has sought the revocation of the grant of representation issued herein and confirmed on 28<sup>th</sup> February, 2007. The application is expressed to be brought under the provisions of *Section 76 (a), (b) & (c)* of the Law of Succession Act and *Rule 44 (i), (2), (3), (4) and (5)* of the probate and Administration Rules. The application is supported by the affidavits of the applicant sworn on the 11<sup>th</sup> March, 2008 and 10<sup>th</sup> February, 2009 respectively. In the main the applicant seeks revocation of the grant on the grounds that the proceedings before the court leading to the grant were conducted intestate whereas the deceased had executed a valid will with regard to how his estate should devolve upon his death.

Of course by dint of *Section 76* of the Law of Succession Act, this court has jurisdiction to revoke a grant of representation, whether or not confirmed and at anytime on application provided the applicant satisfies the court on any or all of the conditions stated therein. The applicant must for instance satisfy the court that the proceedings to obtain the grant were defective in substance, or that the grant was obtained fraudulently by making of a false statement or by the concealment from court of something material to the case, or that the grant was obtained by means of an untrue allegation of a fact essential in point of law or that the person to whom the grant was made has failed to seek for its confirmation within one year from the date hereof or to proceed diligently with the administration of the estate. As I understand it, it is the contention of the applicant that to the extent that the deceased estate was handled as intestate whereas it should have been testate since there was a valid will, then the grant was obtained on defective and fraudulent proceedings. There was also concealment of something material to the case i.e. the existence of a will.

What is the take of **Mohinder Singh Saimbhi** and **Hardev Singh Saimbhi** on the issue? To them the

grant was issued to three of them, the applicant included jointly and was subsequently confirmed to the three of them again. The confirmed grant has since been effected. It is now not open for the applicant to claim that the grant was not properly obtained when he was an active participant in the process that led to its issuance and subsequent confirmation of the same. The applicant had all the time to opt out of the succession proceedings on the basis that proceedings ought to have been testate as opposed to intestate. Since he was an active participant in the process he cannot now be heard to question the process on the basis of the alleged will.

When the matter came up for hearing, the court with the concurrence of the parties, directed that the application be heard by way of affidavits on record and that respective parties do file and exchange written submissions if need be. Subsequent thereto respective written submissions were filed and exchanged. I have carefully read and considered the same.

To my mind the issue for determination in this application is fairly simple and straight forward; can a litigant who withholds vital information to a fair and just resolution of the dispute later turn around and use such information to impugn and or fault a decision arising therefrom when he was an active participant? My answer to that rhetoric question is of course an emphatic No! From the record I gather that when the instant petition was filed on 29<sup>th</sup> June, 2001, the applicant was one of the witnesses to the signature of the 1<sup>st</sup> respondent. By that time, the applicant knew of the alleged will yet he did not object to the petition going the intestate way. He did not propose that in the light of the existence of the will, they should rather proceed by way of grant of probate. Similarly on 20<sup>th</sup> August, 2004, an application was made requiring that the applicant do render account in respect of Tropical Trading (Kenya) Ltd, Nyeri Municipality Block 1/923, estate quarries and vehicles of the estate. The applicant again did not raise the issue of the will. Later the applicant was appointed a joint administrator of the estate of the deceased. In a replying affidavit dated 13<sup>th</sup> October, 2004 in paragraph 4 thereof, he deponed;

**“.....I wish to state that I was legally appointed as a joint administrator and had properties allocated to me by valid wills made by my father and grandfather which are still in the custody of the applicant’s counsel.....”**

The applicant having alluded to the existence of valid wills did he opt out of the proceedings on that score? No! He opted to play on. Subsequently an application for confirmation of grant was filed. What did the applicant do? He filed an affidavit of protest as required in intestate proceedings where there is a disagreement as to the mode of distribution of the deceased’s estate. Though he had mentioned that the estate of the deceased should be distributed according to the wishes of the deceased as enshrined in the last will, he did not deem it necessary to move the court as appropriate for the cause to be dealt with as testate rather than intestate. Eventually the grant was confirmed on 28<sup>th</sup> February, 2007.

From the foregoing it is quite clear that the applicant knew of the existence of the will all through this litigation. He cannot therefore claim that the grant was obtained through a defective procedure, fraud and false statement, or through untrue allegations of a fact essential in point of law to justify the grant notwithstanding the point may have been made in ignorance or inadvertently. If that were the case, he is equally to blame. He cannot now purport to benefit from his own mischief by filing the instant application. It is noteworthy that all through the proceedings, the applicant was represented by able counsels. It was up to his counsel to object to the confirmation of grant on the grounds that an application by the 2<sup>nd</sup> respondent dated the 20<sup>th</sup> August, 2004 was still pending on record or that there were similarly two protests filed by the 2<sup>nd</sup> respondent and applicant dated 11<sup>th</sup> November, 2004 and 21<sup>st</sup> June, 2005 respectively still pending. That the said lawyers did not raise any objection, it must be taken that they had abandoned the application as well as the protests or had even waived their rights to prosecute them. To raise those issues now is to my mind a mere afterthought. The applicant is merely bent on clutching on any straws available in a bid to remain afloat from a sinking ship.

The applicant having been a co-administrator of the estate and the grant having been confirmed to him, is it open to him to seek for its revocation? I have no doubt at all that an administrator cannot apply for revocation of his own grant unless of course it has become useless and inoperative through subsequent

circumstances like the death of a co-administrator. This is not the case here though. As correctly pointed out by **Mr. Karweru**, learned counsel for the respondent, an administrator is vested with powers of a grant upon his own application. He makes such application well aware of the facts. The applicant, it is not in dispute that he was a co-administrator. He proceeded with the cause well aware that there was a will. Indeed he confirmed his satisfaction with the mode of distribution through a letter by his then advocates **Messrs Bwanwonga & Co. Advocates** dated 6<sup>th</sup> March, 2007.

The applicant having participated in the proceedings despite his knowledge about the alleged will and signaled his acceptance of the decision of the court with regard to distribution, cannot turn around and claim that the process was faulty. In any event what prejudice was occasioned to the applicant when the estate of the deceased was handled as intestate rather testate. If the estate was distributed unfairly and not in accordance with the wishes of the deceased as contained in the alleged will, he had a right to object by filing an affidavit of protest. Indeed he did file such protest. Midway through though it would appear he abandoned the same. To me the instant application is clearly an abuse of the process of court.

There must be an end to litigation. These cause has been pending in this court since 29<sup>th</sup> June, 2001. All along the applicant was well aware of the existence of the will but chose not to intervene in the proceedings on that basis. The application for revocation of grant was filed in March, 2008 whereas the grant was made on 12<sup>th</sup> September, 2002. In between the applicant had a right to apply for its revocation he did not.

The upshot of all the foregoing is that I find the application to be lacking in merit. Accordingly it is dismissed with costs to the respondents. *ated and delivered at Nyeri this 22<sup>nd</sup> day of July, 2009.*

**M.S.A. MAKHANDIA**

**JUDGE**