



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
Succession Cause 144 of 1992

IN THE MATTER OF THE ESTATE OF SURJIT SINGH SAGOO (DECEASED)

RULING

This is a summons dated 12th February 2003 for revocation of grant of letters of administration issued on 12th May 1999. It is said to have been brought on the part of Santokh Kaur Sagoo as executor or administrator of the estate of Surjit Singh Sagoo. However, in real substance it was brought by one Supinder Singh Sagoo as an alleged beneficiary of the estate. The application is for revocation or annulment of grant issued to Santokh Kaur Sagoo.

The application seeks the revocation or annulment of the grant of letters of administration on grounds that: -

- 1. The executrix has failed to apply for confirmation of the grant.**
- 2. The executrix has failed to proceed diligently in administration (sic) of the estate.**
- 3. The executrix has failed to produce any inventory or account of administration as required.**
- 4. The executrix with my brother (a brother of the applicant) are plundering the estate to my (applicant's) detriment and that of other would be beneficiaries/dependants of the deceased.**

The application is supported by an affidavit sworn on 12th February 2003 by the applicant. The application is opposed and a replying affidavit sworn on 20th May 2003 by Santokh Kaur Sagoo the executrix was filed in opposition to the application.

At the hearing of the application Mr. Katwa submitted that the executrix had failed to diligently administer the estate and had refused to apply for confirmation of the grant. She had also failed to file account of the estate in court. That was why the applicant had filed the application for revocation and annulment of the letters of administration. He submitted that under section 76 of the Law of Succession Act (Cap.160) a grant of letters of administration could be annulled or revoked. If section 76 was read together with section 83(e) of the Act, the requirement was that within 6 months of the grant, the administrator was required to produce in court a full inventory relating to the estate. She had failed to do so, thus necessitating the application.

He submitted that the negativity of the Will of the deceased did not exclude the applicant from benefiting from the estate. The Will had to be construed as a whole and not merely on the basis of a few paragraphs. The pending suits referred to in the replying affidavit did not provide proof of the averments in the plaints, as the said suits had not been determined and were pending. From the replying affidavit it was clear that the respondent had not given an account of the estate to the court, as required by law. An argument that the applicant had no locus standi could not be sustained because, having been appointed as a trustee by the deceased, his position was indefeasible.

Mr. Machio for the respondent opposed the application. He submitted that the applicant described himself as a beneficiary while in fact he was not. The Will specifically appointed the respondent as the sole executrix of the estate and also bequeathed all moveable and immovable possessions to her absolutely, so long as she survived the deceased by 30 days. She did survive him for more than 30 days and therefore all the default provisions in the Will were rendered null and void. Therefore the applicant was not a beneficiary of the estate of the deceased and was not competent to bring this application. The applicant was also not a trustee under the Will. The deceased did not give any power to the executrix to distribute the estate to the sons.

He also submitted that it was not true that the executrix was not diligent in the administration cause. There were annexures to the replying affidavit showing that the executrix had in fact applied for confirmation of grant. There were also annexures showing that there were pending two cases instituted by the administratrix against the applicant in relation to the assets of the estate, which were misused by the applicant. The administratrix brought those two cases in the interests of the deceased's estate, which belonged to the executrix as per the Will. The executrix could not be criticized under section 82 of the Law of Succession Act, as there are litigations pending. The executrix could not present an account to court, while there were pending cases showing plunder of the estate by the applicant.

This is an application for revocation of grant of letters of administration. The applicant Supinder Singh Sagoo described himself in the application as a beneficiary of the estate. It is his contention that as a beneficiary he has a legal locus to bring the application. He is a son of the deceased Surjit Singh Sagoo. The executrix Santokh Kaur Sagoo is his mother. In his view, since the executrix was granted letters of administration in 1999 she has failed to diligently administer the estate. Therefore, he seeks revocation/annulment of the grant.

Mr. Machio argued that the applicant is not a beneficiary and therefore has no basis for bringing the application. Both the counsel for the applicant and counsel for the respondent do not dispute the contents of a Will made by the deceased on 17th June 1978. They however disagree on its interpretation.

Counsel for the applicant has argued that the Will makes the applicant a beneficiary. Counsel for the executrix argued that the Will does not make the applicant a beneficiary as he would have been a beneficiary only if the executrix did not survive the deceased for 30 days. However, as the executrix survived the deceased for more than 30 days the Will provided that the executrix was the sole executrix and beneficiary of all the estate of the deceased.

I have perused the Will. It does in fact appoint the executrix as the sole executrix and beneficiary of the estate of the deceased provided that the executrix survived the deceased for 30 days. If the executrix did not survive the deceased for 30 days the Kamaljit Singh Sagoo and Supinder Singh Sagoo (the applicant) would become trustees of the estate and also become beneficiaries of the estate equally with Harminder Singh Sagoo and Harpittal Singh Sagoo. I highlight the important parts of the Will –

“I APPOINT my wife SANTOKH KAUR SAGOO wife of SURJIT SING SAGOO of Post Office box number 154 Eldoret aforesaid to be the sole executrix of this my Will.

I GIVE DEVISE AND BEQUEATH the whole of my estate both real and personal movable and immovable of whatsoever nature and wheresoever situate including but not limiting the same thereto any property of any kind whatsoever over which I may have power of disposal or appointment now or before my death or which may devolve upon me by reversion or any other legal process unto my said wife Santokh Kaur Sagoo wife of Surjit Sing Sagoo absolutely provided that she shall survive me for thirty days. In the event my said wife predeceasing me or not surviving me for thirty days as aforesaid then and in that event only I DIRECT AND DECLARE that the subsequent clauses of this my Will shall take effect but otherwise such clauses shall be absolutely null and void.

The relevant parts of the subsequent clauses provide that: -

I APPOINT KAMALJIT SINGH SAGOO and RUPINDER SINGH SAGOO of post office box number 154 Eldoret aforesaid to be the Executors and Trustees of this my Will and hereinafter refer to them as “my Trustees”. I GIVE DEVISE AND BEQUEATH the whole of my estate both real and personal movable and immovable of whatsoever nature and wheresoever situate including but without limiting the same thereto any property of any kind whatsoever over which I may have a power of disposal or appointment now or before my death or which may devolve upon me by reversion or any other legal process unto my Trustees UPON TRUST for the following purposes.

1. For payment of all my just and lawful debts funeral and testamentary expenses and the expenses of executing any trust hereby created.

2. I GIVE DEVISE AND BEQUEATH the residue of my estate to be divided equally between the said KAMALJIT SINGH SAGOO, SUPINDER SINGH SAGOO, HARMINDER SINGH SAGOO and HARPITPAL SINGH SAGOO to be paid over to them as and when they attain the age of Twenty One years.

From the above contents of the Will it is quite clear that the deceased appointed the executrix the sole executrix of his estate and also made her the sole beneficiary of the estate provided that she survived him for at least 30 days. There is no dispute that the deceased died on 24th July 1992. There is no dispute that the executrix survived the deceased for more than 30 days and is still alive in 2005. The default clause in the Will which would make the applicant a joint trustee and joint beneficiary of the estate were declared in the Will to be null and void, if the executrix survived the deceased for at least 30 days. Since the executrix has survived the deceased up to today, which is more than 12 years, the applicant cannot claim to be a beneficiary of the estate of the deceased. For someone to bring an application like the one that the applicant has brought for revocation and annulment of the grant of letters of administration he has to establish an interest that is recognized by law. The applicant is not a beneficiary the way he describes himself. It is true, he is a son of the deceased. He is also a son of the executrix. That, however, does not make him a beneficiary because the Will of his deceased father bequeathed all the estate to his mother the executrix. I therefore find that the applicant does not have a locus standi to bring this application and the application has to fail on that ground. Having come to this conclusion, I will address the other issues raised, but they are academic.

As to whether the executrix has failed to apply for confirmation of grant, section 71 of the Law of Succession Act provides that an administrator shall apply for confirmation of the grant after six months from the date of grant of letters of administration. This in my view, presumes that there are no disputes. In this particular case the letters of administration were issued in May 1999. It is obviously more than 6 months from then. However, the executrix did in fact apply for confirmation of the grant, which was objected to. In addition there are pending court cases involving the estate and the applicant, which have not been determined. I am of the view that the executrix cannot have the letters of administration confirmed before those two cases are determined as that would mean leaving the claims of the estate in those cases out. Such confirmation will not reflect the full assets and liabilities of the estate, if it is done before those two cases are finalized. That will not be right as it will not disclose the true position of the estate at the confirmation of grant. On whether the executrix failed to proceed diligently with the administration of the estate, I do not find any basis for that assertion. The executrix applied to court for grant of letters of administration. She was granted the same. She applied for confirmation of grant. She filed two cases on behalf of the estate to claim for what she considered was interference by the applicant in the assets of the estate. There is no evidence that she has wasted the assets of the estate. A mere allegation that she has not proceeded diligently with the administration of the estate, without any particulars, does not assist the applicant. I find no evidence of lack of diligence in the administration of the estate.

On the issue that the executrix has not provided on account of the assets to court, section 83 (e) of the Law of Succession Act (Cap.160) requires an administrator files an account on the estate in court. The requirement is that the account of the assets and liabilities of the estate are filed in court within six months of the grant of letters of administration. However, in this particular matter the executrix has filed two cases which are still pending in court.

In that event, it is my view, that she cannot be able to file a complete account before the two cases are finalized and determined. All that can be done presently is to speed up the finalization of those two pending cases.

As to whether the executrix has, together with the brother of the applicant, plundered the estate, there is no evidence of that. A mere allegation without particulars of that plunder and evidence to show the same would not have helped the applicant in that regard. I find no basis for this complaint. The upshot of the above is that I find that the applicant is not a beneficiary of the estate or a trustee and has no legal basis or locus standi to bring the application that he brought for revocation/annulment of the grant. The application therefore fails and has to be dismissed.

For the above reasons, I dismiss the application with costs to the executrix.

Dated and Delivered at Eldoret this 30th Day of May 2005

George Dulu

Ag. Judge

In the Presence of: Mr. Kutwa for applicants

Mr. Machio for respondents