



REPUBLIC OF KENYA



**In re Estate of Reshman Kaur Ruprah (Deceased) (Probate & Administration
26 of 2018) [2025] KEHC 7342 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 7342 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
PROBATE & ADMINISTRATION 26 OF 2018**

AB MWAMUYE, J

JANUARY 23, 2025

IN THE MATTER OF THE ESTATE OF RESHAM KAUR RUPRAH (DECEASED)

BETWEEN

HARINDER SINGH RUPRAH OBJECTOR

AND

PARIMINDERJIT SINGH RUPRAH PETITIONER

RULING

Background

1. Vide Summons for Revocation of Grant dated 17th October 2019, and brought under Section 76(a), (b) and (c) of the *Law of Succession Act*, Rule 44, 49, 73 of the *Probate & Administration Rules*, as well as Section 3A of the *Civil Procedure Rules*, Harinder Singh Ruprah, a son of the above-named deceased person, is seeking the following Orders:
 - i. That the Grant of Letters of Administration issued on the 18th of September 2019 to Parimanderjit Singh Ruprah be revoked or annulled.
 - ii. That the Respondent, Parimanderjit Singh do, within a time be prescribed by this Honourable Court, produce to the Court, a full and accurate inventory and account of the assets and liabilities including tax liabilities, of the Deceased and a full and accurate account of all dealings therewith and all the monies generated and collected from the assets of the Estate.
 - iii. That declaration does issue that all monies appropriated by the Respondents, Pariminderjit Singh Ruprah, be deemed as advances to him from the Estate of the Deceased and be deducted from their shares of the Estate, if any.
 - iv. That the Honourable Court do issue any further orders it may deem fit and just to grant.



The Applicant/objector's Case

2. The nub of the Applicant's case is that the Interim Grant issued on 18th September 2018, was obtained by fraud and concealment of material facts, and that it was obtained by means of an untrue allegation.
3. It is the Applicant's case that the alleged Will dated 12th March 2003 that forms the basis of the petition and Grant was not the last written will of the Resham Kaur Ruprah (Deceased) as expressed in the petition for grant of probate. According to the Applicant, the deceased's last written will is dated 28th May 2013 in which she expressed her last wishes regarding the distribution of her estate upon her demise. Intending to edge the Applicant out of the estate of the deceased, the Petitioner/Respondent clandestinely lodged the subject petition and listed himself as the only beneficiary of the deceased's estate.
4. The Applicant/Objector states that oblivious of the Respondent's machinations he lodged a citation against the Respondent on the 17th of July, 2019, in Kisumu, Chief Magistrate Court Succession (Citation) Cause No. 64/2019 and proceeded to serve the same upon the Respondent for him to either accept or refuse the letters of probate of the written will of the said Resham Kaur Ruprah (Deceased) dated 25th May 2013 together with the Applicant.
5. However, he was later to learn through the Respondent's Replying Affidavit dated 13th August 2019, filed in response to the citation that the Respondent had already filed the instant petition relying on a previous Written Will dated 12th March 2003, presenting it as the deceased's last will and testament.
6. The Respondent reads malice in the fact that despite being served with the citation, he did not care to disclose that he had lodged the petition for advertisement in the Kenya Gazette, and that fact is evidence of ill-will.
7. Besides that, the Applicant claims that he established that the Respondent had forged a document dated 14th June 2013 and purported it to be the last will of the deceased. For that reason, the Applicant avers, the Respondent deliberately filed a petition to obtain a grant based on a false statement, concealment, or misrepresentation of material facts essential to the law.
8. Accordingly, the Applicant is of the view that considering the Respondent knew or ought to have known that the basis of the petition and grant herein was not the last will of the deceased, Resham Kaur Ruprah, he was, therefore, culpable of concealment and/or misrepresentation of material facts essential to the law.

The Petitioner/respondent's Case

9. The Respondent filed a Replying Affidavit dated 29th November 2019, in response to the Applicant's Summons. In their response to the accusation that he had deliberately concealed material facts or authored patently untrue allegations in his petition for the grant of probate, the Respondent alleged that as at the date that he instructed his advocates to file the succession cause, he was only in possession of and only had the knowledge of the deceased's written will dated 12th March 2003.
10. In the same Affidavit, he claims that he only learned of the will dated 28th May 2013, purportedly executed by the deceased, upon being served with the citation. He denies the authenticity of the will and terms it "an outright and blatant forgery" because he knows that of his "own knowledge" as well as through conversations with his own mother. On this he continues to aver that the deceased had divulged to him that the Applicant had typed up a "will" which he showed to her and tried to coerce her by threats, emotional blackmail, and duress to sign, but she adamantly refused to capitulate.



11. The Respondent notes that the deceased was apprehensive that the Applicant would resort to underhand machinations such as forgery to sneak his way into her estate, and to preclude that, she confided in him that she wanted to draw up another will that was to be her last.
12. He further avers that he was unaware whether the deceased drew up the will and that it was when the citation was served upon him that he rummaged through his deceased mother's documents and therefore found a copy of a will drawn up by his mother on the 14th of June 2013.
13. The Respondent proceeds to punch holes on the authenticity of the will relied on by the applicant by annexing an Affidavit sworn by one of the alleged witnesses of the said will of 28th May 2013, a Mr. Harbhajan Singh Sembi. The witness depones that he did not witness the deceased execute the said will, and that he blindly signed the document without reading it, and that he did that in the absence of the deceased. He further avers that the signature on the will of 28th May 2013 is not his mother's.
14. He is of the view that his petition for a grant of probate passes muster because it discloses two other supposed dependents, to wit, Mrs. Narinderjit Kaur Sihra and Mrs. Manminderjit Kaur Sembi.
15. In any case, according to him, he noted in his Replying Affidavit that he had lodged the petition for advertisement in the Kenya Gazette Notice as disclosed in paragraph 10 of his Replying Affidavit.
16. The Respondent is of the view that the applicant, who is his brother, has no legitimate claim whatsoever to the estate of his deceased mother.
17. In order to establish her capacity as a testator, he depones that in the days leading up to her demise she was well, lucid, and in her full senses.
18. The Respondent proceeds to assert the authenticity of the deceased's alleged will of 14th June 2013 and to call into question the inferences drawn from the document examiner retained by the applicant who found that the signature on the will is different from the provided specimens.

Issues, Analysis And Determination

19. I have carefully considered the rival averments, the testimonies, and the documents adduced, and distilled the following issues/questions as vying for determination:
 - i. Was the grant obtained regularly.
 - ii. If there was a concealment/misrepresentation, does it warrant a revocation of the grant of probate?

Analysis

Was the grant obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case?

20. Whether there was concealment or fraud, or misrepresentation is a question of fact.
21. The Applicant avers that the proceedings initiated by the petitioner and the grant issued thereof are marred by fraud, false statements, and misrepresentation of material facts to the case. The petition is based on a written will dated 12/03/2003, held out by the Respondent to be the last will and testament of the deceased.
22. The Respondent in his Replying Affidavit dated 29th November 2019, depones that as at the time he was issuing instructions to his counsel to lodge a petition for a grant of probate, he only had, and was



- only aware of, the will date 12/03/2003. He further states that he only became aware of the other ‘Will’ of 14/06/2013, when he was served with a citation to accept or refuse a grant of probate with the Applicant wherein was annexed another will dated 28th May 2013, and that he was oblivious of hitherto.
23. In paragraph 36 of his Replying Affidavit dated 29th November 2019, the Respondent admits that the Applicant had made references to another will on several occasions subsequent to the death of the deceased. At the same time, he avers in paragraph 5 of the same Affidavit that it is upon being served with the citation that he discovered the will dated 28th May 2013. It is also this very will that for some reason activated him to search through his mother’s belongings as if in a hunch to find the will dated 14th June 2013. The Respondent does not make clear why the discovery of the will dated 28th May 2013, triggered him to embark on the search, and what exactly he hoped to find, especially since he elsewhere avers that he was unaware of the will dated 14th June 2013.
 24. What is quite telling is the Respondent’s own deposition at paragraph 11 of his Supplementary Replying Affidavit dated 9th March, 2020, where he seems to confess that he may have been aware of the will dated 14th June, 2013 throughout, and the only reason he held out a previous will as the deceased’s last will and testament is due to the fact that as at the time of filing the succession cause he was not in custody or possession of the will dated 14th June, 2013. This explains the “extensive search” upon sighting the will of 28th May 2013.
 25. It is also inconceivable that none of the witnesses listed in the said will cared to let him know of the deceased’s last will for close to six years, and that he had to accidentally stumble upon it in a hunch-inspired “search.”
 26. I am not persuaded that the Respondent was unaware of other testaments subsequent to the will dated 12th March 2003.
 27. In any case, the Respondent has not attempted to rectify his petition to reflect the correct state of things. Therefore, I am of the view that this is a deliberate or inadvertent concealment of facts that are material to the grant of probate. Whether the petitioner/respondent intended to or could have disclosed them if he was aware of them does not matter.
 28. Therefore, I will refrain from imputing concealment as that has to be deliberate, and I first must see into the mind of the Petitioner/Respondent to be able to glean his intentions. However, there is no doubt that the allegation that the 12th March 2003 will was the last one is untrue, at least according to the arguments of both parties.
 29. In conclusion on this matter, I find that the impugned grant herein was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant.

Does the irregularity in the manner the grant was obtained justify a revocation?

30. There are three wills on the record. The first one and the one relied on by the Petitioner/Respondent is dated 12th March 2003; the second one is dated 28th May 2013 and was produced by the Objector/Applicant in his citation and application; the third one is dated 14th June 2013. There is no dispute about the first one as all parties acknowledge its authenticity, but they both maintain that the same was revoked by two different subsequent Wills.
31. Section 17 and 18 of the *Law of Succession Act* provides that a subsequent will can revoke an earlier Will.



- 32. Evidence has been led by both parties that mutually impeaches, or at least casts aspersions on each of the subsequent wills.
- 33. As regards the 28th of May 2013 Will, one of the witnesses of its execution, Mr. Harbhajan S., and the Applicant's only available witness, has come out to take back his signature from the Will: he claims that he did not sign in the presence of the deceased, therefore, he was not privy to the testator's wishes. He further depones that he did not read the alleged Will before signing.
- 34. The other witness is a Mary Owiti. The Applicant cannot trace her, despite his best attempts. According to the Applicant, she used to work as the deceased's help. Other than the Applicant, no one else knows who she is, made worse by the fact that her identification documents are not annexed.
- 35. Things are not better for the 14th June 2013 Will adduced by the Petitioner/Respondent. The Objector/Applicant thinks that the testator's signature thereof is forged. He instructed a Forensic Document Examiner to investigate the signature as against two known signatures of the deceased, including the one on her official documents such as her passport.
- 36. The Document Examiner returned a verdict that the signatures do not match and the one on the will is a forgery. The Document Examiner testified under oath and proved his credentials. Upon examination he adopted his report, and satisfactorily proved his methods on cross-examination. No probable reason was provided to doubt the Document Examiner's credentials, methods, and verdict that the signature on the alleged Petitioner's Will of 14th June 2013 was forged. In any case, video evidence produced in the exhibits of the Objector/Applicant and a translation of the same show that in the period leading up to her demise, the deceased was of a different mind than the one expressed in the 3rd Will.
- 37. Therefore, I am disinclined to go with any of the wills over the other. As such, I am unable to discern the wishes of the deceased from the evidence adduced.
- 38. Accordingly, I revoke the Interim Grant issued to the Petitioner/Respondent and direct the succession proceedings herein to proceed intestate.

DATED, SIGNED, AND DELIVERED ON THIS 23rd DAY OF JANUARY 2025.

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BAHATI MWAMUYE.
JUDGE.

