



REPUBLIC OF KENYA



**In re Estate of Sharda Dwarkadas Kanjee Lakhani (Deceased) (Succession Cause E320 of 2022) [2025] KEHC 8133 (KLR) (Family) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8133 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E320 OF 2022  
HK CHEMITEI, J  
JUNE 12, 2025  
IN THE MATTER OF THE ESTATE OF SHARDA  
DWARKADAS KANJEE LAKHANI (DECEASED)**

**RULING**

1. This ruling relates to the application dated 14<sup>th</sup> June, 2023 filed by Padma Reva Dwarkadas Lakhani seeking for orders that:-
  - a. Spent.
  - b. This honourable court be pleased to stay the implementation of the certificate of confirmation of grant dated 8<sup>th</sup> February, 2023 hereof.
  - c. The certificate of confirmation of grant dated 8<sup>th</sup> February, 2023 be revoked and or annulled hereof.
  - d. This honourable court be pleased to order the Respondents to render and tender in court a full and accurate inventory of all the deceased's assets within fourteen (14) days from the date of this order.
  - e. This honourable court be pleased to order the Respondents to account for all the rental income in respect of the deceased's land property known as L.R. No. 209/212 and 213, Sergoit Lane, Muthaiga in Nairobi City County, from the date the deceased died within fourteen (14) days from the date of this order.
  - f. The costs herein be borne by the estate hereof.
2. The application is based on the grounds on the face thereof and supported by affidavit sworn by Padma Reva Dwarkadas Lakhani on 14<sup>th</sup> June, 2023.
3. She avers inter alia that unless the court halts the execution of the certificate of confirmation of grant dated 8<sup>th</sup> February, 2023, she and her ailing daughter will suffer significant harm. She seeks revocation



- or annulment of the grant on grounds that the Respondents withheld crucial information and failed to notify or involve her, even though she is a rightful beneficiary of the deceased's estate.
4. That the Respondents did not submit a complete or accurate inventory of the deceased's assets and have failed to account for the rental income generated from the properties known as L.R. No. 209/212 and 213, located on Sergoit Lane in Muthaiga, Nairobi.
  5. She had previously obtained court orders on 20<sup>th</sup> April, 2023 after proving that interested parties were properly served. Despite being served, the Respondents did not oppose her petition and instead filed parallel court proceedings without informing her or disclosing the existence of this cause to the court - an act she considers a deliberate concealment of material facts.
  6. Her daughter, Jasmine Radhika Lakhani, who is also a beneficiary, suffers from epilepsy and asthma and urgently needs costly surgery. The deceased had promised to cover her medical expenses but passed away before doing so. She herself is also unwell and on constant medication. She alleges that her siblings knowingly ignored this situation and violated her and her daughter's right to a fair share of the estate.
  7. She further claims that the Will submitted by the Respondents is invalid because it bears a signature that does not belong to the deceased. As someone familiar with the deceased's handwriting, she asserts that the signature is forged. Therefore, the Respondents' actions are unlawful and misleading, and the grant should be revoked to protect the estate and ensure equitable inheritance among all beneficiaries.
    1. Top of Form
    2. Bottom of Form
  8. The application is opposed vide replying affidavit sworn by Mukundrai Pranjivan Vasanji Kanabar.
  9. He avers inter alia that he is the executor of the deceased's estate. The deceased had named him, Bharat Dwarkadas Lakhani and Dilip Lakhani as executors in her will dated 1<sup>st</sup> August, 2016. Following her passing, they filed a petition for a grant of probate on 17<sup>th</sup> December, 2021, which was subsequently published in the gazette on 20<sup>th</sup> May, 2022. The grant of probate with written will, was issued to them on 21<sup>st</sup> June, 2022 and confirmed on 8<sup>th</sup> February, 2023.
  10. Both parties have not filed written submissions.

### **Analysis And Determination**

11. I have gone through the applications, responses thereto and the rival submissions filed by the parties, and address them as follows:
12. In re Estate of Julius Mimano (Deceased) [2019] eKLR, Judge Musyoka stated as follows:-

“The personal representative of a deceased person holds a unique position in law. The property of the dead person is vested in them by virtue of section 79 of the [Law of Succession Act](#). The effect of section 79, read together with section 82 of the Act, is that the same puts the personal representative on the same footing with an owner of the property, in the sense that he exercises the powers that the legal owner of the property would have exercised were they alive, and suffered the same burden of duties and obligations over the property as the legal owner would have been under were they to be alive. Yet, the property, although vested in them by law, would not be theirs. Although the personal representative has legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They



would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the *Trustee Act*, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over the estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.”

13. In *Springboard Capital Limited v Njenga & another (Civil Appeal 14 of 2024)* [2024] KEHC 7013 (KLR) (14 June 2024) (Judgment) the court pronounced itself as follows:

“28. It is trite law that he who alleges must prove. Section 107 (1) of the *Evidence Act*, Cap 80 Laws of Kenya, provides that:-Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

29. In *Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, the Court of Appeal held that:-As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

14. The Applicant contests the validity of the Will on the basis that the signature on it does not belong to the deceased. She, however, has not provided any proof to back up her claim. There is no alternative signature or a report by a document examiner or a handwriting expert to confirm whether or not the signature belongs to the deceased.

15. This therefore remains her assertion and an unfounded allegation.

16. From the will dated 1<sup>st</sup> August, 2016, the Respondent is one of the 3 executors of the deceased’s will. The will defines the deceased’s estate in its clause 3 to wit

“All her property of every kind situate in Kenya, all her property of every kind situated in Kenya over which she has a general power of appointment and the money investments and property from time to time representing all such property”.

17. The deceased’s 4 children, the Applicant included, have been allocated 25% each of the estate. My understanding therefore is that the applicant has her share of 25 % and therefore entitled to it.

18. The role of executors is to ensure that the wishes of the deceased are complied with. It cannot therefore be left for the Applicant to leave a destitute life while she could enjoy the fruits left behind by her parent.

19. In any case it is the responsibility of the Respondent to provide accounts of the estate from the date they got the grant confirmed as per the will.

20. It will not be efficacious to revoke the grant for the simple reason that there is no tangible evidence by the applicant to persuade the court. However, on the other prayers of accounting by the executors I do agree with her.



21. Consequently, the application is allowed as hereunder:-

- (a) The executors within 14 days from the date herein should provide the estates and in particular rental income from LR No 20 9/212 and 213 Sergoit Lane, Muthaiga in Nairobi city respectively, from the date the grant was confirmed on 8<sup>th</sup> February 2023 to date.
- (b) Once order (a) above is complied reasonable provisions equivalent to 25% be made to the Applicant.
- (c) This matter shall be mentioned before the Deputy Registrar of this court to confirm compliance.
- (d) Costs in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 12<sup>TH</sup> DAY OF JUNE 2025.**

**H K CHEMITEI**

**JUDGE**

