



REPUBLIC OF KENYA



In re Estate of Naran Lakhman Ravji - Deceased (Succession Cause E20 of 2020) [2024] KEHC 3930 (KLR) (8 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3930 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E20 OF 2020
RN NYAKUNDI, J
APRIL 8, 2024**

**IN THE MATTER OF THE ESTATE OF NARAN LAKHMAN RAVJI -DECEASED
MAYUNBEN LAKHMAN NARAN1ST PETITIONER/RESPONDENT
MANILAL RAVJI NARAN2ND PETITIONER/RESPONDENT
VERSUS
MUTHONI NGARUIYA1ST OBJECTOR/APPLICANT
YASMIN SHAMIRA LAKHMAN.....2ND OBJECTOR/APPLICANT**

RULING

1. The application for determination is one dated 16.1.2024 expressed to be brought Under Section 29 and 47 of the *Law of Succession Act* Cap 160 of the Laws of Kenya Rule 45,63 and 73 of the Probate and Administration Rules, Order 45 of the Civil Procedure rule 2010 and all Other enabling Provisions of the Law.
2. The application seeks the following orders:
 - a. That the Honourable Court be pleased to Review the orders issued on 20.11.2023 by removing the 2nd petitioner as an Administrator of this Estate.
 - b. That the Honourable court to order for branch managers of the banks below to disclose by providing statements disclosing funds held in those Bank Accounts as from 20.10.2020 to date
 - i. Rift Hauliers Cargo Transporter, Bank of Baroda Account No. 95880XXXX.
 - ii. Lakshman Ravji, Bank of Baroda Account No 958801XXXX
 - iii. Rift Hauliers Cargo Transporters, DTB Account No 019675XXXX
 - iv. Lakhman Ravji I&M Bank Account No 0170006XXXX
 - v. Rift Hauliers Cargo Transporter, Mayfair Bank Account No 040135XXXX



- c. The Honourable court be pleased to grant an order directing the petitioners to draw money in the under listed Bank Accounts in order to enable the 2nd objector pay school tuition fees and school related activities as per the academic calendar.
 - i. Rift Hauliers Cargo Transporter, Bank of Baroda Account No 95880XXXX.
 - ii. Lakshman Ravji Bank of Baroda account No 958801XXXX
 - iii. Rift Hauliers Cargo Transporter, DTB Account No. 019675XXXX
 - iv. Lakhman Ravji I&M Bank Account NO 0170006XXXX
 - v. Rift Hauliers Cargo Transporter Mayfair Bank Account No 040135XXXX forKsh 303,068.00 pending school fees arrearsMay academic trip in May 2350 Euros.
 - d. That the petitioner/Administrator to provide full and accurate inventory of the deceased estate and provide full account of all the dealings form the estate of the deceased demise to date.
3. In support of the application as an affidavit by Yasmin Shamira Lakhman in which she is contesting the appointment of Manilal Ravji Naran as the Administrator to the estate of the deceased. The key evidential material comprises the following:
- i. That the 2nd petitioner under the degree of affinity and consanguinity as provided for pursuant to Section 29 of the Laws of Succession was not a dependant of the Deceased hence ought not to be an Administrator.
 - ii. That the 2nd petitioner has not met the required conditions to qualify him to be a dependant pursuant to Section 29 of the Laws of Succession.
 - iii. That the 2nd petitioner having some properties in common with the deceased does not confer to him any right to be an Administrator of this estate.
 - iv. That I am a student at Strathmore University pursuing a Bachelor of Arts Degree in International Studies where I have accumulated tuition fees of Kshs 303, 068 and rent arrears of Kshs 200,000
 - v. That my late father had vast of properties some of them he owned in common with the 2nd petitioner and also there were business they were partners hence the need to have the current statement of accounts prior confirmation of grant is done.
4. The application is strongly opposed by the 2nd petitioner in which he deposed as follows:
- i. That there is absolutely no basis for my removal as an administrator to the deceases estate.
 - ii. That the grounds for removal of an administrator under section 76 the Succession Ct do not obtain
 - iii. That the applicant has unsuccessfully sought the revocation at the grant issued to me and after a full hearing of the objection the honourable did not find merit for the removal of the administrator's
 - iv. That if the applicant was unhappy with the decision of the honourable court made on 20.11.2023 then the only available avenue for challenging the dec3ision is through an appeal not review



- v. That I have been advised by my counsel Mr Momanyi that the grounds for review do not obtain in this matter as there is no discovery of a new and important matter or evidence which could not have been produced had due diligence been exercised there is no mistake apparent on the face of the record nor is there any sufficient reason.
- vi. That whereas I have no objection to the banks in issue providing the information sought I will however have an issue on the money sought being released to the applicant on account of the following
 - a. Rift Haulier Cargo Transporter is a business account and the money therein Is to run the transport business.
 - b. There are huge loans owed to imperial Bank by the partnership
 - c. The funds in Bank of Baroda Account number 958801XXXX wee advanced to the deceased by his sister varsani
 - d. Harshita Lakhman Naran is in college abroad and is in need of upkeep
 - e. The funds in the business partnership accounts are not necessarily a profit that can be utilised as the same will make the business crumbles
 - f. Out of any profit that may finally be realised I will be entitled to half of the profit thereof
- vi. That I am ready and willing to account for that belongs to estate of the deceased and or provides a full account as and when called upon so to do
- vii. That letters of administration are not necessarily issued to dependants and the court has unfettered discretion to appoint whoever it deems appropriate from within the acceptable degree of affinity and consanguinity.
- viii. That the estate can only fund the applicant's education within the available resources.
- ix. That the applicant has no rent arrears as it was clear during the hearing that the resides with her grandmother who is mother to her mother.
- x. That the issue of who are the administrators of the deceased's estate has already been revolved in favour of the petitioner.
- xi. That it has always been clear that I am not a dependant of the deceased and the honourable court made a conscious decision to have me as one of the administrators to my later brother's estate.

Analysis and Determination

- 5. The deceased person here died intestate and the law governing appointment on administrators is provided for under Section 66 of the *Law of Succession Act* which provide as follows: That when a deceased has died intestate, the court shall save as otherwise expressly provided have a final discretion as to the person or person to whom a grant of letters of administration shall in the best interests of all concerned, be made, but shall without prejudice to that discretion, accept as a general guide the following orders of preference:
 - a. Surviving spouse or spouses, with or without association of other beneficiaries.



- b. Other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by part V
 - c. The public Trustee and
 - d. Creditors.
6. The appointment of the 2nd petitioner as the administrator to the deceased estate was vide the legal instrument issued by this court signed by Omondi J as she then was on 26.5.2021. There has been a series of applications seeking revocation of the grant of letters of administration by Muthoni Ngaruya and Yasmin Shamira Lakshman as objectors to the estate. The court pronounced itself on the matter in the judgement dated 20.11.2023. The key decision was couched as follows: As a consequence a model of distribution be filed by the administrators to the extent of the free property of the deceased with allocation of shares as provided for in the statute. In the same judgement, Muthoni Ngaruiya the mother to Yasmi Shamira Lakhman was appointed as a trustee to hold in trust any property that shall be allocated to her daughter pending her attainment of maturity age. Apparently from the record I see no summons for confirmation of grant detailing the model of distribution to the heirs of the deceased estate. In this latest application the Yasmin Lakhman has again come forward praying for a remedy to revoke the appointment of Manilal Ravji Naran adverting to many grounds in her affidavit.
 7. Does this application qualify for this court to exercise jurisdiction to remove and revoke the appointment of Manilal Ravji Naran. For that discretion to be exercised the application must meet the threshold of the following provisions and the principles in case law. To start with Rule 73 of the Probate and Administration Rules provides for the inherent power of the court as follows: “ Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”
 8. Is this application by the applicant unique and of its own kind? The answer is No. Superior court have spoken on this issue before as reflected in the re Estate of Elijah Mbondo Ntheketha (Deceased) (2017) eKLR in which the court stated” “that the removal of an administrator amounts to revoking his appointment. Revocation of grants is provided for under Section 76 of the *Law of Succession Act*. An applicant seeking to obtain such revocation must build a case founded on Section 76.” In terms of Section 76 of the Act the court is clothed with wide powers aimed at serving the interest of justice. The Section provides that “ A grant of representation whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion that the person to whom the grant was made has failed, after due notice and without reasonable cause either (i) To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow or (ii) To proceed diligently with the administration of the estate of (iii) To produce to the court within the time prescribed any such inventory or account of administration as is required by the provisions of paragraph € and (g) of section 83 or has produced any such inventory or account which is false in any material particular.
 9. Is it a proper application from the affidavit of the applicant has the burden of proof been discharged to warrant removal of Manilal Naran. The principles to guide this court are as illustrated in re-Estate of William Nzioka Mutisya (Deceased) (2018) eKLR Hon. Justice GV Odunga J as he then was made the following observations “ It is however my view that the administrators may be removed from their duties where due to wrangles and disagreements amongst themselves, it is impossible for them to proceed diligently with the administration of the estate...In my view if the court finds that the administrators are unable to properly administer the estate due to their disagreements, nothing steps the court from removing them from the administration and appointing new administrators notwithstanding the issue of priority or preference.



What worries me is that those matters which the applicant alleges in her affidavit on suspension or removal of Manilal Naran have not ripened within the framework of Section 76 of the [Law of Succession Act](#). There is no probative evidence from the applicant that by Manilal Naran having joint ownership or common tenancy or shares in a company limited by guarantee or shares with the deceased there is a conflict which will render his administration untenable. The other aspect of this application seems to ignore the order of the court upon the administrators to file summons for confirmation of grant of letters of administration based on the assets and beneficiaries survived of the deceased. That goodwill and virtue of good faith is at the moment vested with the administrators as duly appointed by Omondi J as she then was and the supplements of Muthoni Ngaruiya as a trustee for the shares/properties/assets that shall be conveyed to her daughter Yasmin Lakhman. The question on revocation, removal, and suspension of Manilal Naran as a co-administrator as of now lacks merit.

10. The other question the application asked this court to answer was on Clause No. 3 & 4 of the summons dated 16.1.2024. My short answer is that is why administrators are appointed to navigate that landscape and in the event they require assistance from this court they shall do so by way of an application. The window opened after my ruling was for the administrators to apply for confirmation of the grant on or before expiry of six months. In addition, the law obligates them to proceed diligently with the administration of the estate and to cooperate with other co-administrators and beneficiaries for the common good of the estate and in compliance with the law. As we discuss this application the administrators are yet to file summons for confirmation of grant. The application of rendering accounts cannot come from the applicant. She is not the administrator. The best in this succession for her is what [the constitution](#) provides in Art. 53 (2) a child's best interest are of paramount importance in every matter concerning the child. The priority of her survival basic rights for example, education, health, shelter, clothing, right to life, right to security and dignity, right to privacy, right to inheritance, etc. are in such manner guaranteed by [the constitution](#) and the children's Act and none of the administrators is permitted to infringe, threaten, or violate those rights. That is really the fundamental question the applicant has raised in her capacity as a child and dependant of the deceased under Section 29 of the Succession Act. The highlights of the affidavit by the Manilal Naran read together with the provisions of the law has failed to answer with supporting evidence that there is prioritization of the Applicants fundamental rights. The affidavit is in general in its scope without entrenching matters to do with the best interest and welfare of the child. Importantly this court needs to see, conceive, appraise and determine two things free property of the deceased estate available for distribution, and the actual dependency as at the time of his death.
11. The applicant also sought other many remedies as to the proprietorship of the deceased's estate with Manilal Naran and other siblings. On this issue I am fortified to refer the applicant to Section 49 and 50 of the [Land Act](#) 2012. This position can only become clearer once the administrators comply with the law by filing the necessary instruments of registration, conveyance, transfer, beneficial interest, and all ownership of the properties mentioned in the affidavits by the primary administrators. It is not a question for this court to answer at the moment until the administrators demonstrate by way of evidence what constitutes free property of the deceased estate.
12. Having said that the question which this court must answer at an opportune time is whether the subject property or any part thereof forms part of the deceased's estate, so that if it does the court can thereafter apply the law on distribution in consonant with Section 35,36,37,38 of the [Law of Succession Act](#).
13. I have given due consideration to the other issue raised by the applicant on review of the judgement of this court on account of an error apparent on the face of the record. Review of a judgement of the court is a matter of law.



14. Section 80 of the *Civil Procedure Act* Cap 21 provides as follows:

“Any person who considers himself aggrieved—

- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -

“1. Any person considering himself aggrieved—

(1)

- a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

In *Republic v Public Procurement Administrative Review Board & 2 others* [2018] eKLR it was held: -

“Section 80 gives the power of review and Order 45 sets out the rules. The rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record, or (c) for any other sufficient reason and whatever the ground there is a



requirement that the application has to be made without unreasonable delay.”

Sarder Mohamed v. Charan Singh Nand Sing and Another (1959) EA 793 where the High Court held that Section 80 of the *Civil Procedure Act* conferred an unfettered discretion in the Court to make such order as it thinks fit on review and that the omission of any qualifying words in the Section was deliberate.

15. Discussing the scope of review, the Supreme Court of India in the case of *Ajit Kumar Rath vs State of Orisa & Others*, 9 Supreme Court Cases 596 at Page 608, had this to say:-

“the power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabilizing it. It may be pointed out that the expression “any other sufficient reason” means a reason sufficiently analogous to those specified in the rule”

16. In *Tokesi Mambili and others Vs Simion Litsanga* the Court held as follows: -

- i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.
- ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion. In *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR High Court of Kenya Nairobi Judicial Review Division Misc. Application No. 317 of 2018 John M. Mativo Judge culled out the following principles from a number of authorities: -
 - i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
 - ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
 - iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
 - iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.



- v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
- vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
- vii. Mere discovery of new or important matter or evidence is not sufficient
- viii. ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
- viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
- ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
- x. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.

17. In the present case, the applicant wants the Court to review its ruling delivered on 20/11/2023 that the 2nd petitioner should be removed as a co administrator because he is not a dependant to the estate of the deceased under Section 29 of the *Law of Succession Act*. That fundamental ground does not qualify for this court to exercise review jurisdiction under Section 80 of the *Civil Procedure Act* and Order 45(1) of the Civil Procedure Rules. The other collateral grounds also in support of review are also wanting and below the legal threshold as outlined in the above case law and the *Civil Procedure Act* and Rules. If that is not sufficient enough Rule 73 (1) of the Probate and Administration Rules as read with Section 66 of the Succession Act the court has inherent jurisdiction when it comes to appointment of legal representatives to administer the estate of the deceased. Section 66 is just a touchstone provision. The application has no factual nor legal legs to stand on because it is anchored on sinking sand.

18. It is evident and consistent with the legal principles and statutory provisions that the application lacks merit and is hereby dismissed with costs.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 8TH DAY OF APRIL 2024

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R. NYAKUNDI
JUDGE

