



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Tarsem Singh Rayit (Deceased) (Succession Cause  
204 of 2007) [2024] KEHC 4619 (KLR) (Family) (6 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 4619 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**SUCCESSION CAUSE 204 OF 2007**  
**MA ODERO, J**  
**MAY 6, 2024**  
**IN THE MATTER OF THE ESTATE OF TARSEM SINGH RAYIT (DECEASED)**

**JUDGMENT**

1. Before this court is the summons for Revocation of Grant dated 29<sup>th</sup> September, 2022 filed by the two Applicants Avtar Singh Rayit And Kulwant Kaur Rayit seeking the following orders
  - i. Spent
  - ii. That a fresh grant of probate be issued to Avtar Singh Rayit and Kamaljit Singh Rayit.
  - iii. That the Grant of probate granted to Avtar Singh Rayit, Rajinder Singh Rayit and Kamaljit Singh Rayit on 22<sup>nd</sup> February, 2022 be revoked on the ground that the inclusion of the Respondent herein makes the administration of the estate impossible.
  - iv. That the Grant of probate granted to Avtar Singh Rayit, Rajinder Singh Rayit and Kamaljit Singh Rayit on 22<sup>nd</sup> February, 2022 be revoked on the ground that one of the executors, the respondent herein has failed to proceed diligently with the administration of the estate.
  - v. That the Grant of probate granted to Avtar Singh Rayit, Rajinder Singh Rayit and Kamaljit Singh Rayit on 22<sup>nd</sup> February, 2022, be revoked on the ground that one of the executors, the respondent herein [failed] to render true and accurate accounts of all the dealings in the estate of the deceased within 60 days from the date of the ruling which was delivered on the 22<sup>nd</sup> February, 2022.
  - vi. That the respondent be ordered to deposit all the title documents which he is holding in respect of all properties forming the part of the estate of the deceased with the applicant's advocates.
  - vii. That the respondent be ordered to deposit all the title documents which he is holding in respect of all properties forming the part of the estate of the deceased with the applicant's advocates.



- viii. That the respondent be ordered to refund the estate a sum of Kshs 39,667,108 being the rental income illegally collected by the respondent and which has not been accounted for from the year 2008-2022.
- ix. That the costs of this Application be costs in the cause.
2. The summons which was premised upon Section 47 and 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules was supported by the Affidavit of even date, the Further Affidavit dated 23<sup>rd</sup> September, 2022 as well as the supplementary affidavit dated 14<sup>th</sup> April, 2023.
3. The Respondent Rajinder Singh Rayit opposed the summons through his Replying Affidavit dated 1<sup>st</sup> November, 2022.
4. The matter was disposed by way of vive voce evidence.

### **Background**

5. This succession cause relates to the estate of the late tarsem singh rayit (hereinafter 'the Deceased')/ who died on 26<sup>th</sup> January, 2006 at the M.P Shah Hospital in Nairobi. A copy of the Death certificate Serial Number 938527 appears as Annexure RSR'T' to the Petition for Grant of Probate dated 31<sup>st</sup> January, 2007.
6. The Deceased was survived by the following persons
  1. Kulwant Kaur Rayit - Widow
  2. Avtar Singh Rayit - Son
  3. Rajinder Singh Rayit - Son
  4. Paramejit Kaller - Daughter
  5. Kamaljit Singh Rayit - Son
7. The Deceased died testate having left behind a written will dated 31<sup>st</sup> May, 2005 by which will the Deceased appointed his sons Avtar Singh Rayit, Rajinder Singh Rayit and Kamaljit Singh Rayit as joint executors. In the same written will the Deceased bequeathed the residuary of his entire estate to his wife Kulwant Kaur Rayit.
8. Following the demise of the Deceased Grant of Probate with written will was on 17<sup>th</sup> May, 2007 made to the Respondent Rajinder Singh Rayit. The Grant was duly confirmed on 11<sup>th</sup> March, 2008.
9. Thereafter some disagreements arose between the family members regarding the administration of the estate. The widow filed an application seeking to have the Grant revoked.
10. The matter was referred for Court Annexed Mediation and a mediation settlement Agreement was reached on 27<sup>th</sup> July, 2017 which Agreement provided as follows:-

“The parties agree as follows:

- i. That pursuant to the last will of the late Tarsem Singh Rayit dated 31<sup>st</sup> May 2005, the sons have agreed that the three of them will be the joint trustees and executors of the said will and that all decisions regarding the administration of the estate and especially the power to call or convert the real estate by sale or otherwise into cash will be made through mutual consultation and agreement



of all the parties. The final authority to implement the decisions so made will be made in writing by Kulwant Kaur.

- ii. That parties agree that notwithstanding the fact that Rajinder Singh is the named administrator of the estate, and holds the letters of administration thereof, He shall not carry out the powers bestowed on him by the letters of administration nor carry out any decisions or activities that may affect the estate in any way, without consultation and agreement of all the sons, with the final authority being the mother.
  - iii. That their sister Paramjeet Kaur shall receive a monthly allowance of five hundred pounds (pounds 500) from the estate without fail, which funds shall be sent on or before the 5<sup>th</sup> day of each month with effect from 5<sup>th</sup> August 2017. until the estate is able to equip her with a home in the United Kingdom
  - iv. That Rayit Management Limited will not be held liable for any liabilities that may have been incurred by Hind Construction Company.
11. Despite the existence of this mediation Settlement Agreement which was adopted by the court on 11<sup>th</sup> September, 2017, disagreements continued to rock the family. The widow (2<sup>nd</sup> applicant) then filed a second application seeking to have the Grant issued to the Respondent revoked.
  12. That application was heard by Hon. Lady Justice Mutuku who in a ruling delivered on 22<sup>nd</sup> February, 2022 reiterated that the Mediation Settlement Agreement was a consent order which remained binding on all parties. The court proceeded to revoke the Grant which had been issued to the Respondent and directed that a fresh Grant of Probate be re-issued in the Joint Names of Avtar Singh Rayit, Rajinder Singh Rayit and Kamalyit Singh Rayit.
  13. The Court also directed that the estate be administered according to the settlement Agreement of 17<sup>th</sup> July, 2017. Finally the Court directed the Respondent to render true and accurate accounts of all his dealings with the estate.
  14. Despite this intervention and clear directions from the Court the parties were still not able to act in unison. As a result the widow (2<sup>nd</sup> Applicant) filed this third application seeking to have the Grant revoked on grounds that the inclusion of the Respondent as an Executor made it impossible to move forward with the administration of the estate.

### **The Evidence**

15. The 2<sup>nd</sup> Applicant testified as PW1. She confirmed that she was the widow of the Deceased. The 2<sup>nd</sup> Applicant complained about the manner in which the Respondent was administering the estate. She accused him of not adhering to the terms of the Mediation Settlement Agreement reached by the parties.
16. The 2<sup>nd</sup> Applicant accused the Respondent of taking over the family home and turning the same into a garage. She stated that she has not been able to enjoy the property left behind by her husband and eventually moved to London to live with her daughter.
17. The 2<sup>nd</sup> Applicant states that she has severally asked the Respondent to move out of the family house but he has declined to do so. She complains that the Respondent has turned the family home into a garage and that she has not been allowed access to her late husband's bank account. She now wants all the assets left by the Deceased to be transferred to her name as per the wishes of the Deceased and specifically the 2<sup>nd</sup> Applicant wants the Title Deed for the house in Westlands.



18. The respondent told the court that he is the 2<sup>nd</sup> born son in the family. He confirms that he is aware of the Mediation Settlement Agreement and that he participated in the mediation process.
19. The Respondent asserts that he was named by the Deceased in the written will as Executor and Trustee of the Estate. He states that following mediation the family worked well together until 'Avtar' the 1<sup>st</sup> Applicant decided to run all the family accounts from Australia where he resided.
20. The Respondent confirmed that he resides in the family home in Westlands and states that he has lived there for 40 years. That after his siblings relocated out of the country, he remained in the family home.
21. The Respondent told the court that title for the estate assets are yet to be transferred to the widow due to some problems with the lease. That there is a dispute over the Park Road property. He states that the rental income is deposited in I & M Bank Account of which he was initially a signatory but that the 1<sup>st</sup> Applicant later removed his name from the account. The Respondent denies that he is collecting and utilizing the rental income alone.
22. Upon the close of oral evidence the parties were invited to file their written submissions. The Applicant filed the written submissions dated 13<sup>th</sup> June, 2023, whilst the Respondent relied upon her written submissions dated 13<sup>th</sup> July, 2023.

### **Analysis And Determination**

23. It is common ground that the Deceased Tarsem Singh Rayit who was the Patriarch of the family passed away on 26<sup>th</sup> January, 2006. It is also agreed by all the parties that the Deceased died testate having left a written will dated 31<sup>st</sup> May, 2005 in which he bequeathed his entire estate to his widow Kulwant Kaur Rayit. In the same written will the Deceased appointed his three sons Avtar Singh Rayit, Rajinder Singh Rayit and Kamaljit Singh Rayit as the Executors of the estate.
24. It is not in dispute that Grant of Probate was issued to the Respondent as he was the only son residing in Kenya which Grant was duly confirmed on 11<sup>th</sup> March, 2008. However despite the Deceased having taken the precaution of writing a will in which he set out his wishes things have not run smoothly. There have been constant squabbles and disagreements within the family regarding the Administration so much so that the widow filed a summons seeking to revoke the Grant which was issued to the Respondent.
25. The parties all agree that the matter was referred for mediation and that a mediation settlement Agreement dated 27<sup>th</sup> July, 2017 was reached. Still disagreements continued to plague the administration of the estate.
26. The purpose of having this cause referred to mediation and the aim of the mediation settlement Agreement was to enable the Administrators work in harmony in order to fulfil the final wishes of the Deceased. Right now the administration of the estate is at a standstill because parties are unable to agree on the way forward.
27. I have carefully perused the final will of the Deceased dated 31<sup>st</sup> May, 2005. It is clear that the wish of the Deceased was to bequeath the residue of his estate to the widow.
28. The Respondent was appointed as the sole trustee whose duty was to carry out the last wishes of his father. A property in India was also bequeathed to the Respondent. The will further provided that no asset was to be disposed off without the written authority of the widow. The Applicants have prayed that the original Grant of Probate issued on 22<sup>nd</sup> February, 2022 be revoked as the inclusion of the



Respondent has made it difficult for the executors to proceed with the diligent administration of the estate.

29. The Grounds upon which a Grant may be revoked are clearly set out in Section 76 of the Law of Succession Act Cap 160 laws of Kenya as follows:-

“A grant of representation whether or not confirmed may at time be revoked or annulled if the court decides either on application by any interested party of its own motion –

- i. that the proceedings to obtain the grant were defective in substance;
- ii. that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- iii. that the grant was obtained by means of an untrue allegation of a fact essential in point in law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- iv. 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; or
  - iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of Section 83 or has produced any such inventory or account which is false in any material particular; or
  - iv. that the grant has become useless and inoperative through subsequent circumstances.

30. In the case of Albert Imbuqa Kisigwa v Recho Kawai Kisigwa Succession Cause No 158 of 2000 Mwita J stated as follows:-

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.” [Own emphasis]

31. The Applicants accuse the Respondent of mismanaging the estate and acting contrary to the wishes of the widow.
32. The Applicant accuse the Respondent of having rented out estate property being the property known as LR No 1870/IX/59 in west lands (hereinafter the Westlands Property) to Plumb line Hardware stores for Kshs 350,000 per month. That contrary to the Mediation Settlement Agreement this was done without the written consent the widow and without consultation with the other beneficiaries.



33. It is further alleged that instead of depositing this rental income into the family bank account held at I & M Bank the Respondent has instead been depositing the said funds into an account opened and run by himself which account is held at the Kenya Commercial Bank, and has failed to account for that rental income.
34. The fact that this Westlands Property is an asset belonging to the estate is not in any dispute. As such any income accrued from the said property belongs to the estate and ought to be held and utilized for the benefit of the estate. In his evidence the Respondent admits that he rented out the shop in question. He further admits to having opened a separate estate account at Kenya Commercial Bank into which the rental income from the shop is deposited. The only reason the Respondent is now unable to access those funds is because the 2<sup>nd</sup> Applicant (widow) applied to have the account frozen.
35. Given that there already existed an estate accounts at I & M Bank it was mischievous of the Respondent to move to open a second estate account in another Bank. It is clear the Respondent was not acting in tandem with the other family members.
35. The 2<sup>nd</sup> Applicant has annexed to the supplementary Affidavit dated 14<sup>th</sup> April, 2022 copies of the Bank statements for an account held in the name of the estate of the late Tarsem Rayit (Annexure 'KKRI'). The statement indicates several withdrawals from the account which beneficiaries are querying.
36. The applicants further allege that the Respondent has commenced illegal construction on the Westlands Property without any authority/approval from the widow or the other beneficiaries. That the Respondent is also running his own business known as hind construction on the same premises and has rented out space to other persons to run garages therein.
37. Annexed to the Supplementary Affidavit dated 14<sup>th</sup> April, 2023 is a copy of a bank statement for an Entrepreneurs Account held at Kenya Commercial Bank in the name Estate of Tarsem S Rayit. There are regular deposits of Kshs 350,000 into said account from Plumb line Hardware stores. There are also various transfers to the Respondent Rajinder S' and 'Dahir K'. The Respondent has not explained these transactions satisfactorily.
38. Also Annexed to the Supplementary Affidavit dated 14<sup>th</sup> April, 2023 are photographs of the Westlands Property (Annexure 'KKR3'). The photographs depict a residential house which appears to be in a dilapidated condition. There are mabati structures and several vehicles and car accessories parked in the compound. Clearly the premises would not in that condition be habitable for the widow.
39. It must be remembered that estate assets/property do not belong to the Administrators to deal with as they wish. Such assets belong to the estate and the executors merely hold the same in trust for the other beneficiaries.
40. The Applicants have also alleged that the Respondent has failed to give accounts to the beneficiaries of the estate despite his having been appointed almost sixteen (16) years ago.
41. Section 83 of the *Law of Succession Act* sets out the duties and obligations of a personal representative of an estate Section 83 (e) provides as follows

“ Personal representatives shall have the following duties

- i. to produce to the court if required by the court either on its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account”.



42. *In Re Estate of Geoffrey Mwangi Chege (Deceased)* [2015] eKLR the Court stated as follows
- “Beneficiaries have the statutory right to obtain an account from the executors of the estate, and at any time they may ask for estimate books and documents.
- .....This is because an executor or administrator is a trustee and is accountable to the beneficiaries for his handling of the estate administration. Further the executor or personal representative is accountable to the court on how the deals with the estate of the deceased” [Own emphasis]
43. Similarly *In Re Estate of Peter Muigai Rubiu (Deceased)* [2015] eKLR the court stated
- The administrators hold an office of trust. They are in a fiduciary position to the beneficiaries with regard to the assets. They must, as trustees account for every single cent that comes into their hands. [Own emphasis]
44. Finally on this point *In Re Estate of David Kyuli Kaindi (Deceased)* [2016] KLR Hon Justice William Musyoka stated as follow:-
- “the personal representative must give account of the assets and liabilities that he has ascertained, and the assets that he has collected gotten in, recovered or gathered and the titles he has perfected, and the steps taken to preserve the estate. He should also state the debts and liabilities that he has paid or settled before moving to court for confirmation of the Grant, and if he has not yet settled the debts, state how he proposes to have them settled. The account at this state should also state the assets that generate income, stating how much has been collected and how it has been utilized.”
45. From March 2008 when he was appointed as executor until 2017 when the Mediation Settlement Agreement was entered into the Respondent failed to provide any accounts in respect of the estate of the Deceased.
46. In a Ruling delivered on 22<sup>nd</sup> February, 2022, Hon. Justice Mutuku made inter alia the following order
- “3 That prayers 4 and 5 shall be cured by the order of this court that the Respondent shall within 60 days form today’s date render a true and accurate account of all the dealings in the estate of the deceased.
- Any shortcomings that may arise from the administration of the estate resulting from acts of mismanagement that are attributable to the Respondent shall result in the Respondent being held personally liable”
47. This order was specifically directed at the Respondent in his capacity as the sole Executor of the estate. The Respondent did not comply with this order to render accounts. Under cross examination the Respondent admits
- “I am aware of the ruling of 22/2/2022. I was directed to file accounts for the estate within 60 days. To date I have not filed accounts.”
48. This is an outright admission on the part of the Respondent that he has failed to comply with court orders.



49. Under re-examination the Respondent attempts to excuse his failure to file accounts by stating that he was not aware which accounts were required and that some documents were misplaced making it difficult to compile the accounts.
50. Nothing would have been easier than for the respondent to come back to court to seek clarity on which accounts were required as well as to explain his predicament if some documents were missing.
51. The applicants have prayed that the Respondent be ordered to refund the estate a sum of Kshs 39,667,108 being rental income he allegedly collected illegally. In my view such orders can only be made once true and accurate accounts have been rendered. Moreover the Applicants have not demonstrated how they came up with the above figure. I therefore decline to grant this prayer.
52. The order to provide accounts was made in February, 2022. To date two (2) years later the Respondent has not complied with the said orders. The Respondent is in contempt of the court orders and the reasons he is advancing for his failure to act are mere excuses.
53. As stated earlier as the executor of the estate the Respondent held the assets on behalf of all the beneficiaries of said estate. The assets do not belong to the Executor and he is accountable to the estate for the manner in which the estate is administered under his watch.
54. *In Re Estate of Julius Mimano (Deceased)* 2019 eKLR it was held
- “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 on 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 ..... 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 estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.” [Own emphasis]
55. I do suspect that that failure of the Respondent to render accounts is motivated by his fear that he would be held liable for any mismanagement and/or loss of funds from the estate as was directed by the court. On this ground alone the Grant should be revoked.
56. It is clear to this court that the Respondent has failed in his mandate as the Executor of the estate. It is also clear to this court that for whatever reason notwithstanding that the Settlement Agreements was reached in 2017, the three Administrators are not able to act in unison for the benefit of the estate. There appears to be a split in the family pitting the Respondent against his mother and siblings. This does not augur well for the estate.
57. The duty of an Executor is to diligently administer the estate of the Deceased and to transmit the assets to the beneficiaries in accordance with the written will of the Deceased. This has not happened in this case. The Deceased herein passed away in May 2005. To date nineteen (19) years later his estate is yet to be fully settled and distributed. Indeed under cross-examination the Respondent states that
- “The Titles have not yet been transferred to my mother as there were some problems with the case. As of today [May 2023] the Westlands property is in the previous owner’s name. The Title in Industrial Area is in the name of my father and Grandfather-----“



58. It is manifestly clear that the administration on this estate is at a standstill and the stumbling block according to all the other beneficiaries is the Respondent. It is the Respondent who is on the ground in Kenya thus he would be expected to put into motion the formalities required to transfer their properties. The court cannot allow one person to stall the distribution of the entire estate. This is a Probate Court whose mandate is to supervise and oversee the distribution of an estate to the genuine beneficiaries.
59. The constant squabbling amongst the beneficiaries of this estate is not conducive to the smooth Administration thereof. The Deceased took his time to write a will in which he detailed his last wishes. It ought to be relatively simple to abide by these wishes.
60. Section 47 of the *Law of Succession Act* vests court with wide discretion in granting protective powers of purposes of safeguarding the estate of a deceased person. It provides;
- “The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”
61. Likewise, Rule 73 of the *Probate and Administration Rules* provides that:-
- “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.”
62. This court fully recognises the fact that a Deceased has testamentary freedom and is at liberty to appoint an executor and/or trustee of his/her choice. Ordinarily the courts are slow to interfere with and/or amend the terms of a written will.
63. However this is a situation where the appointed executor has turned roque so to speak. He is not able to work together with the other court appointed executors to finalise the distribution of this Estate. In such a situation the court has a duty to intervene in order to prevent further squabbles and to prevent dissipation of the estate and any further delay in the finalisation of this matter. For the above reasons it is imperative that the respondent be removed as an Executor of this estate.
64. Finally I allow this summons for Revocation of Grant and make the following orders.
- (1) The Grant of Probate issued to Avtar Singh Rayit, Rajinder Singh Rayit and Kamaljit Singh Rayit on 22<sup>nd</sup> February, 2022 be and is hereby revoked.
  - (2) A fresh Grant to issue to Avtar Singh Rayit and Kamalyit Singh Rayit.
  - (3) The Respondent Rajinder Singh Rayit to file within thirty (30) days full inventory and true and accurate accounts relating to the period when he administered the estate from 11<sup>th</sup> March 2008 to 22<sup>nd</sup> February, 2022.
  - (4) Any loss of funds that may arise from the Respondents administration of the estate resulting from acts of mismanagement attributable to the Respondent will be deducted from the Respondents share of the estate.
  - (5) The Respondent Rajinder Singh Rayit is directed to surrender within seven (7) days all Title Documents relating to property belonging to the Estate to the Advocate of the new Administrators.



(6) This being a family matter each side will meet its own costs.

**DATED IN NYERI THIS 6<sup>TH</sup> DAY OF MAY, 2024.**

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**MAUREEN A. ODERO**

**JUDGE**

