



**In re Estate of Kartar Singh Bhachu (Deceased) (Succession Cause
230 of 2020) [2024] KEHC 8888 (KLR) (Civ) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8888 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

SUCCESSION CAUSE 230 OF 2020

HK CHEMITEI, J

JULY 25, 2024

IN THE MATTER OF THE ESTATE OF THE LATE KARTAR SINGH BHACHU (DECEASED)

BETWEEN

BALRAJ SINGH BHACHU PETITIONER

AND

MANJIT KAUR REHAL RESPONDENT

RULING

1. Before looking at the competing applications herein it is necessary to set out the background which in my view is supposed to be clear and straight forward although the parties instead have erected various barriers and thus delaying the matter.
2. The Applicant who for purposes of this ruling shall be referred to as Bhachu and the son to the deceased filed this cause indicating that the deceased died testate. The court after an application by the Respondent, hereinafter referred to as Manjit, and a sister to the Applicant set aside the grant which it had issued to the Applicant on the grounds that the gazette notice issued was erroneous. The error was that the same had indicated that the deceased died intestate.
3. Muchelulei J (as he then was) on 19th January 2022 directed *inter alia* that:-

“...I direct that the petition filed by the Respondent on 5th March 2020 be gazetted afresh. Upon gazettement the Applicant or any other interested party will be at liberty to object to the grant, challenge the validity of the oral will or cross petition for a grant, whatever they will choose...”
4. The Applicant thereafter gazetted the same although the court was unable to see the corrigenda, but nonetheless the same is not disputed by the Respondent.



5. The Applicant thereafter filed what he is calling “Notice Of Amendment Of Application For Grant” dated 13th April 2023 where he has sought to amend the affidavit sworn on 4th March 2020. The amendments to the affidavit contains 7 paragraphs which essentially changes the tenor and content of the affidavit dated 4th March 2020.
6. A cursory look at the said affidavit is actually an addition to the issues and evidence which goes to support the allegations that the deceased left a written will.
7. The application has been opposed by Respondent vide her replying affidavit sworn on 1st August 2023 on the grounds that the same is defective for the simple reason that such kind of amendment is unknown in law and it was totally un-procedural.
8. That the issues raised therein were to do with an oral will which on her part never existed as the deceased was lucid and learned enough to have made a proper written will. She therefore prayed that the same be dismissed.
9. The Respondent on her part when a head to petition for letters of administration vide her petition dated 29th May 2023. Her supporting affidavit sworn on the same date has included all the deceased beneficiaries including her brother Bhachu as well as the assets left behind.
10. The said Mr Bhachu has opposed the said petition vide his Notice of Motion dated 20th July 2023 and supported by the grounds thereof and the affidavit of Caroline M W Maina her counsel on record.
11. The motion seeks to have the Manjit petition struck out for the reasons that it was filed late in the day despite the extension of time by the Deputy Registrar contrary to section 68 (1) of CAP 160.
12. The Applicant Manjit countered this argument on the timelines by asserting that it was the Respondent who failed to gazette the same as directed by the court in its earlier ruling.

Analysis and Determination.

13. I have perused the issues raised herein, the competing affidavits and the submissions on board.
14. As indicated above there is no doubt that the rival siblings here are contenting on one issue, whether, the deceased left an oral Will or not. The affidavit evidence on both sides and in particular Bhachu suggests that the deceased left an oral will and he has attached affidavits of his key witnesses whom he claims heard the deceased before he passed on.
15. Of course the Respondent, Manjit, and by extension the rest of the family members think otherwise.
16. Be it as it may I think the “Notice of amendment of application for grant “by Bhachu is not known in law as clearly submitted by Manjit. The same does not contain any motion and the affidavit respectfully is simply amended through the “air”” so to speak.
17. In any event one cannot amend an affidavit. The best way is usually to apply to introduce further affidavit. If there is any amendment, it must be done sparingly. Needless to state that were the court to allow the same then it would have materially differed with the original affidavit both in content, tenor and style.
18. Consequently, I do not find the same meritorious and I strike it out.
19. As regards Manjits petition I think for the fact that I have struck out Bhachus application for amendment, the same ought to stand. Although Bhachu was of the opinion that the same was defective



for violating Section 68(1) of Cap 160 I do not think striking it out is efficacious for now. The deceased estate ought to move on.

20. In other words, the court cannot countenance a situation where the parties are spending so much time and resources on side shows while in the meantime the estate may be going to waste and the beneficiaries aging or facing other vagaries of life.
21. For this reason, there is no harm to be suffered by Bhachu. He shall still be able to respond to the petition by Manjit by way of cross petition if need be. The issue of whether the deceased left an oral will will still be in contention.
22. In the premises and relying on Rule 73 of the Probate and Administration Rules, this court makes the following orders:-
 - (a) The petition by Manjit dated 29th May 2023 is hereby treated as the main petition herein and the same be served upon all the parties.
 - (b) The Notice for Amendment of grant by Bhachu is hereby struck out.
 - (c) The Respondent, Bhachu, shall be at liberty within 30 days from the date herein to file if need be a cross petition.
 - (d) Costs in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 25TH DAY OF JULY 2024.

H K CHEMITEI

JUDGE

