



**In re Estate of Ansuya Narshi Gohil (Deceased) (Succession Cause E1951 of 2021)
[2024] KEHC 10973 (KLR) (Family) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 10973 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E1951 OF 2021
HK CHEMITEI, J
SEPTEMBER 19, 2024
IN THE MATTER OF THE ESTATE OF THE LATE ANSUYA NARSHI GOHIL (DECEASED)**

BETWEEN

DINBALA NARSHI KANJI HIRJI GOHIL OBJECTOR

AND

PARITA DHARMESH PARMAR 1ST RESPONDENT

JAIMINI NIPUL SHAH 2ND RESPONDENT

JUDGMENT

1. The Applicant /Objector filed objection proceedings herein dated 26th April 2022 seeking the following orders;
 - (a) That the grant of letters of administration to the Respondents made on 11th February 2022 be revoked or annulled.
 - (b) That in the interim the administrators be compelled to render a full and accurate inventory of the assets of the deceased.
2. The said application was supported by the sworn affidavit of even date.
3. The Respondents on their part objected to the application vide their joint affidavit sworn on 26th May 2022.
4. When the matter came up for directions the court ordered the same to proceed by way of viva voce evidence. The Applicant testified and did not call any witness. The Respondents on their part called one witness beside herself.



5. The matter was concluded and the court directed that submissions be filed which the parties have complied.

Background

6. The history of this matter before looking at the evidence so tendered is worth reproducing here. The deceased herein was the widow of the late Narshi Kanji Gohil who died sometimes in 1984. The Objectors mother had predeceased their said father who then went ahead to marry the deceased herein and got three children who are the Respondents herein and the executors of her will and a son Jayesh Narshi kanji Gohil.
7. The deceased made a written will dated 7th May 2021 in which she appointed the Respondents who are her biological children as executors and bequeathed her estate to her above named son.
8. In the said Will she indicated the executors and the beneficiary shall not have any responsibilities to the Objector at all.
9. The Applicant has therefore filed these objection proceedings on the grounds that she was discriminated upon by her step mother despite the properties belonging to her late father and mother.

Objectors Evidence

10. In her testimony she said that her mother passed on when she was 3½ years old and her sister Rashmika was 1¼ years old. She said that the deceased inherited the estate of her late father. That she has been residing in the property along Masari Road since 1975.
11. She went on to testify that her sister and herself were expected to be part and parcel of the estate herein but the Respondents did not notify them. That she only found out after the grant had been issued.

Respondents Case

12. The Respondent on her part called her brother Jayesh (DW1) who testified that the deceased had made the Will bequeathing all her property to him leaving out her step children. He said that at the time of making her Will the deceased was in a good state of mind. That the relationship between the deceased and the Applicant had broken down by the time of her death.
13. The petitioner Perita (DW2) testified that she was the executor of the will together with her sister. She said that according to the Will the deceased did not want to have anything to do with the Objector.
14. She said that she was not discriminated against and that they did not inform her of this proceedings as they did not think it was necessary.

Objectors Submissions

15. The Objector joined issues with her evidence and submitted that indeed she was excluded from these proceedings and therefore the benefit from the estate of her late father. She relied among others on *The estate of Abdulkarim Chatur Popat* (2019) eKLR and which cited specifically specifically Rule 40(8) of Cap 160.
16. She also argued that there was total concealment of material facts by the Respondents and in particular that she was a beneficiary of the estate or a dependant for that matter as provided under Section 76 of the Act.



17. As regards the will she submitted that the same had discriminated her and her sister despite the deceased knowing very well that they were available and that they were her step children. This is exemplified by the fact that the deceased made her daughters executors of her Will leaving them out.
18. For the above reasons therefore she prayed that the grant be annulled and they be considered dependants within the meaning of Section 29 of Cap 160.

Respondent's Submissions

19. The Respondents submitted in line with their evidence adduced during the hearing. They submitted that the Objector had not addressed the issue of the Will which according to them was germane. That the said will could not be faulted as the deceased had the liberty to make the same without any let or hindrance.
20. The Will was therefore valid and they relied among others on the *Estate of Julius Mimano* (deceased) 2019 eKLR. That the deceased had the capacity to make the said will and all the formal requirements were adhered to.
21. They submitted that despite being excluded from the Will the Objectors have been unable to establish the reasons why they were excluded and more importantly to prove dependency. As provided under Section 29 of the Act the Respondent submitted that the step children were not automatically recognised but they had to prove their dependency upon the deceased.
22. They submitted that they cannot be faulted for failing to notify the Objector on this matter as the Will did not require them to do so. That they owed fidelity to the will which they have implemented to the letter.
23. As regards the inventory they submitted that they have indicated all that the deceased left behind and if there were any as submitted by the Objector during her testimony then she ought to have shown such evidence. In their view there were no other assets left behind by the deceased as claimed by the Objector and if they were then the deceased had dealt with them prior to her demise
24. They concluded that the Objector had not submitted any meaningful evidence to show the invalidity of the will and thus the objection proceedings cannot stand and they ought to be dismissed. The Objectors further failed to establish their dependency on the estate or the deceased.

Analysis and Determination

25. The main issues herein, are whether the Objector and her sister are dependants of the deceased within the meaning of Section 29 of the Act; whether the Applicants concealed material facts as provided under Section 76 of the *Act* and whether in light of the same the will was valid for all intent and purposes.
26. The relationship between the Objector and the deceased was not in dispute. The Objectors mother passed on while they were still toddlers. He later married the deceased with whom they had the three children, namely the two executors and their brother who is the main beneficiary in the will.
27. It is also undisputed that the Objector whom she told the court was 64 years old at the time of her testimony had been staying in one of the deceased flats, a fact acknowledged by the Respondents. That she had stayed therein for decades so that even by the time the deceased was making the Will the presumption was that she was aware of the same.



28. Contrary therefore to the submission by the Respondents the Objector and her sister were the deceased dependants as provided under Section 29 of the Act which states as hereunder:-

“For the purposes of this Part, "dependant" means—

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased's parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.” (Underlining mine.)

29. When making an application under the then Mental Act in Case No Miscellaneous 22 of 1983 in respect to her late husband Narshi Kanji Gohil on 18th January 1983 she stated in her petition under paragraph 12 that:

“the petitioner and the Ward have the following children dependant upon them;

- (a) Miss Dinabala20 years unmarried
- (b) Miss Rashmika18 years unmarried
- (c) Miss Perita.....11 years
- (d) Miss Jaiwani9 years
- (e) Master Jaish.....8 years”

30. In terms of the properties mentioned in the same petition they are LR NO. 209/102/2/15, LR NO. 209/6922, LR NO. 209/573 and LR NO. 209/2151.

31. It appears then that the above capital assets of her late husband presumably went through a succession proceedings and were transferred to the deceased herein.

32. According to paragraph 3 of the said Will some of these properties and specifically the capital assets were bequeathed to Jayesh, her son.

33. Clearly the deceased inherited the same from her late husband. She did not acquire any that one can trace to her. So in effect what she was bequeathing in the Will was what was left to her by her deceased husband and the father to the Objector.

34. If there was any that she acquired before, during and after her marriage to the late Gohil, then the court is unable to tell. Probably she may have improved what her late husband left behind and that is all.

35. I find therefore that locking out the Objector and her sister from their father's property was not only wrong but illegal and immoral. She was aware of the position her late husband left behind. She acknowledged the two in her petition way back in 1983. What changed on 7th May 2021?



36. The deceased was even aware that the Objector had been staying in one of the flats for many years which she still does to date. She simply ignored that and ordered in the Will that:-

“...I direct that the executors and beneficiary of this Will shall have no obligations, responsibilities or duties of any kind whatsoever towards my step daughter Dinabala Narshi Gohil alias Dinbala Gohil alias Dina Gohil after my demise.”

37. Based on the evidence adduced by the Respondents that their mother by the time of her death was not in good terms with the Objector I think that was the main reason for disinheriting her. Unfortunately, what she had did not belong to her but her husband and father to her step daughters.

38. The petitioners were therefore obliged even if they were following the dictates of the Will to bring to the attention of the Objector the existence of this cause. This is the law as provided under Rule 40(8) which provides that:

“Where no affidavit of protest has been filed the summons and affidavit shall without delay be placed by the registrar before the court by which the grant was issued which may, on receipt of the consent in writing in Form 37 of all dependants or other persons who may be beneficially entitled, allow the application without the attendance of any person; but where an affidavit of protest has been filed or any of the persons beneficially entitled has not consented in writing the court shall order that the matter be set down as soon as may be for directions in chambers on notice in Form 74 to the Applicant, the protester and to such other persons as the court thinks fit.”

39. At the same time Rule 76 clearly spells out the grounds when the grant can be set aside. It goes on to state that:

“Revocation or annulment of grant

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—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) 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;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) 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

- (e) that the grant has become useless and inoperative through subsequent circumstances.” (Underlining mine)

40. In the premises it is evident that failure on the part of the petitioners to notify the Objector was fatal and this court will have the right to intervene.
41. At the same time, they concealed the fact and existence of the Objectors who as is seen herein have been living together for years and as a matter of fact they found them already when they were born. Nothing was much easier than to mention them even if the deceased in her Will directed that she had nothing to do with them.
42. On the question of discrimination there is no doubt that the deceased openly discriminated against the Objector and her sister. She was simply biased and she took her differences into the Will. The intention from the content and the tenor of the will was to simply punish her even from her grave.
43. Although a deceased person has every right of making freely a Will, in a situation where there is an open bias like in this case I doubt whether the court can countenance and more particularly where the assets did not belong originally to the testator. As a matter of fact, she was a mere trustee to the same. I doubt whether her late husband would have disinherited her daughters from his first marriage.
44. Does the court have the authority to vary a will or set it aside.? Before looking at the relevant law it is true and I agree with the Respondents that the Objector did not challenge as such the Will. There is no doubt that the same met all the criteria of a valid Will.
45. The only issue is that beyond its validity she failed to provide for her step children. She only concentrated on her children and ensured that her daughters were executors and the main beneficiary was her son. The Objector testified that perhaps during her lifetime she had already provided for the executors and that is why she did not provide for them in the Will.
46. I therefore find that the best way to approach this matter is not to revoke the Will but to direct that reasonable provisions be made for the Objectors and her sister who share equal position with the executors as well as the beneficiary. Any discrimination against them run contrary to Article 27(1) of Constitution which provides as hereunder;

“(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law”

47. The other properties which the Objector feels that they have been left out can of course be brought through intestate process assuming they are available although the Respondents were of a contrary opinion. There was no evidence in any case presented by the Objector.
48. The application is therefore allowed as hereunder:-
- (a) The petitioner herein Dinbala Narshi Kanji Hirji Gohil and her sister Jaimini Nipul Shah are dependants of the deceased herein and beneficiaries just as the executors and the beneficiary of the Will dated 7th May 2021 and all rank equal.
- (b) The will dated 7th May 2021 by the deceased is hereby varied to the extent that reasonable provisions be made for the Objectors by the executors herein and in default the Objector be at liberty to move the court.



(c) Being a family matter costs shall be in the cause.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 19TH DAY OF
SEPTEMBER 2024.**

H K CHEMITEI

JUDGE

