



**In re Estate of Amritlal Vira Shah (Deceased) (Succession Cause
258 of 2018) [2023] KEHC 3065 (KLR) (Family) (6 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3065 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 258 OF 2018
EKO OGOLA, J
MARCH 6, 2023
IN THE MATTER OF THE ESTATE OF AMRITLAL VIRA
SHAH (ALSO KNOWN AS AMRITLAL VIRA NATHOO
SHAH) (DECEASED)**

BETWEEN

NIRMALABEN MANGALBHAJ PATEL APPLICANT

AND

MAYUKUMAR AMRITLAL SHAH 1ST RESPONDENT

BHARATKUMAR AMRITLAL VIRA SHAH 2ND RESPONDENT

RULING

1. Before the court for determination is the Notice of Motion application dated October 16, 2019 in which the Applicant herein Nirmalaben Mangalbhaj patel seeks the following Orders:
 1. Spent
 2. That pending the hearing and final determination of this application, there be stay of execution of the orders issued by this court on September 17, 2019 and any other subsequent orders hereof
 3. That pending the hearing and final determination of these proceedings, there be stay of execution of the orders issued by this court on September 17, 2019 and any other subsequent orders thereof
 4. That the orders issued on September 17, 2019 be discharged and set aside and the applicant be granted leave to defend the notice of motion application dated April 8, 2019



5. That the costs for this application be provided for
2. The application is premised on Sections 1A and 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya; Rule 49 of the *Probate and Administration Rules*, and Order 51 of the *Civil Procedure Rules, 2010* and all other enabling provisions of the Law. It is based on the grounds set out therein and supported by the Affidavit of even date sworn by the Applicant.
3. The Applicant's case is that she is the widow of the deceased herein. The Applicant avers that when the deceased died, she and the daughter relocated to India. The Applicant deposes that on April 8, 2019 the 1st Respondent filed a Notice of Motion seeking among other things, the interpretation of the Will of the deceased. The Applicant avers that she was not served with that Application and was therefore condemned unheard.
4. The Applicant deposes that she found out about the Application when a ruling dated September 17, 2019 was forwarded to the Bank which called her notifying her of the same.
5. According to the Applicant, the subject of the said Application was a property which according to the Applicant was sold after the Will of the deceased had been executed and before the deceased died. That the deceased distributed his shares of the proceeds of sale completely in a new manner therefore defeating his own Will. That the deceased also became ill and used part of the sale proceeds for his treatment.
6. The Applicant stated that having not been served with the Application, the Orders given are prejudicial to her and she prays for the orders to be stayed and set aside.
7. In response the 1st Respondent filed a Replying Affidavit dated October 29, 2019 opposing the Application.
8. The 1st Respondent's case is that the Applicant is not a widow of the deceased and was not a party in the proceedings for the grant of probate of the Will of the deceased therefor the 1st Respondent did not deem it necessary to serve the application on the Applicant.
9. According to the 1st Respondent, even though the Applicant and her daughter are named as beneficiaries of the deceased's estate, they are still intermeddlers since they had no relations with the deceased. The 1st Respondent avers that he sought from court interpretation of certain clauses in the Will of the deceased which appeared vague.
10. The 1st Respondent states that he believes that the deceased and the Applicant operated an account jointly or severally and thus sought orders as to disclosure for purposes of a fair and complete administration of the estate. The 1st respondent also stated that he believes that the applicant knows the whereabouts of the deceased's properties which are immediately unknown to the 1st respondent as an executor and administrator of the deceased's estate and sought that the Applicant should be ordered to disclose under oath.
11. The 2nd respondent filed a replying Affidavit dated November 25, 2019 and supported the 1st respondent's averments.
12. The parties filed written submissions. The Applicant's submissions are dated November 21, 2022, while the 1st respondent's submissions are dated December 19, 2022. The 2nd respondent did not file submissions.



Determination

13. I have carefully considered the Application, the Affidavits and the Written Submissions by the parties.
14. The 1st respondent on April 8, 2019 filed an Application in court against the 2nd Respondent seeking the following orders: -
1. Monies and/ or balances thereof held in the Bank accounts both in Kenya and India initially in the joint names of the deceased and his widow Nirmalaben Mangalbai Patel emanating from the proceeds of shares in ACME Textiles Limited be deemed to be part of the assets of the deceased's estate.
 2. Nirmalaben Mangalbai Patel holds the said proceeds or balances thereof as a trustee for the Benefits of the remainder of the beneficiaries who had not been given their bequests namely:
 - a. Kunal Mayurkumar Shah
(4 shares out of the 52 shares).....8,000,000/-
 - b. Reema Mayurkumar Shah
(4 shares out of the 52 shares)8,000,000/-
 - c. Chirag Bharatkumar Shah
(4 shares out of the 52 shares)8,000,000/-
 - d. Neha Bharatkumar Shah
(4 shares out of the 52 shares)8,000,000/-
 - e. Nishi Bharatkumar Shah
(4 shares out of the 52 shares).....8,000,000/-
 - f. the two sons and one daughter to receive balance of 3 shares to be distributed equally per paragraph
 - (h) of the Will are:
 - i. MayurKumar Amritlal Shah
(one share of the 52 shares).....2,000,000/-
 - ii. BharatKumar Amritlal Shah
(one share of the 52 shares).....2,000,000/-
 - iii. Rupar Amritlal Shah
(one share of the 52 shares).....2,000,000/-
 3. The monies held in the joint account being the proceeds of the sale of the shares do not form part of the monies the deceased referred to as “monies in my bank accounts in Kenya and India” in paragraph 5 of the will.
 4. Costs of the administration of the estate should be paid out of the then joint account now in the name of Nirmalaben Mangalbai Patel



5. The Balance in the said account in the name of Nirmalaben Mangalbhai Patel after paying the beneficiaries and costs, to be given to the said Nirmalaben Mangalbhai Patel
6. If there is any balance in what is deemed to be a joint account after distributing to the Beneficiaries and payment of the costs of Administration, the same is handed over/retained by Nirmalaben Mangalbhai Patel.
15. The application was not served on the applicant herein nor was she enjoined as a party. The court ruled that the Application was seeking to realize the deceased's wishes as expressed under his last Will and noted that the Application has merit and allowed it. The 1st respondent was ordered to serve the orders on the 2nd Respondent.
16. The Applicant has sought stay of execution and the setting aside of the said orders and also sought leave to defend the Application since she was never served with the Application nor the Orders. The Applicant learnt about the orders from the Bank.
17. The 1st respondent has not denied that he did not serve the Applicant with the Application. The 1st and 2nd Respondents stated that the Applicant was not part of the probate proceedings and so they did not deem it necessary to serve the Applicant. The Respondents also stated that the Applicant was not a widow of the deceased but was a beneficiary. From the prayers of the Application, there are very substantial prayers touching on the applicant. It was not only about interpretation of the Will but also sought prayers in the belief that the applicant herein held some of the properties of the deceased. From the Applicant's case, it seems that she has a substantial defence to the said application that she was not accorded a chance to do.
18. In *Meme V Republic* [2004] KLR 637, the Court laid down the circumstances that would warrant one to be enjoined as a party to a suit as follows: -

“complete settlement of all the questions in the proceedings, protection of the rights of a party who would otherwise be adversely be affected in law, and to prevent a likely course of proliferated litigation”
19. The Respondents have argued that the Applicant was not part of the probate proceedings and therefore did not have to be made aware of the said application. As earlier stated, most of the prayers sought in that application are against the Applicant. The failure to serve or enjoin the Applicant as a party in that application means that not all questions in the proceedings were settled, the Applicant's rights were not protected and the action of the Respondents not to involve the Applicant has led to the current application.
20. The Applicant has argued that the Will of the deceased has some clauses that were already defeated by some events especially claiming that part of the sale proceeds referred to by the Respondents had already been used by the deceased during his lifetime. The applicant was therefore a necessary party in that Application which is a sufficient reason to warrant the setting aside of the orders. The Respondents cannot argue that the applicant in an unnecessary party yet she is mentioned in the Will and she is also a beneficiary of the estate of the deceased.
21. From the foregoing, this Court finds merit in the Application dated October 16, 2019 and the same is hereby allowed as prayed.

Dated, Signed and Delivered at Nairobi this 6th day of March 2023.

E.K. OGOLA



JUDGE

Ruling read and delivered in chambers online in the presence of:

Mr. Malanga for the Applicant

Mr. Masese for the 1st Respondent

N/a for the 2nd Respondent

Ms. Gisiele Court Assistant

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