



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Dalip Singh Dhanjal (Deceased) (Succession Cause 259 of 2013) [2023] KEHC 17618 (KLR) (19 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17618 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 259 OF 2013**

G MUTAI, J

MAY 19, 2023

IN THE MATTER OF THE ESTATE OF DALIP SINGH DHANJAL (DECEASED)

BETWEEN

JASWINDER KAUR KOUNDU APPLICANT

AND

NIRMAL SINGH DHANJAL 1ST RESPONDENT

INDERPAL KAUR DHANJAL 2ND RESPONDENT

RULING

1. Before me is a Notice of Motion application dated 24th January 2023. The same is supported by the affidavit of Moses Buyuka Obonyo, counsel of the Applicant. The application seeks the following orders: -
 - a. Spent
 - b. That pursuant to the judgement delivered by this Honourable Court on 4th November 2022 and pursuant to the subsequent orders issued on 6th December 2022, this honourable court does issue the following orders: -
 - i. The Applicant be allowed to carry out forensic audit of all the estate and relevant documents be availed as requested by her auditors;
 - ii. PKF auditors to release all audited accounts for the estate properties since 2012 to the applicant's auditors;
 - iii. The Applicant be allowed to access and carry out valuation and survey works of all the properties and the reports be submitted to the auditors as well as the applicant's advocates;



- iv. All businesses, rental income, and bank accounts in schedule “A” be disclosed and be operated jointly by the applicant and the 1st Respondent.
 - c. That the 1st Respondent maintains a status quo, not to sale, transfer, alienate and or develop any of the properties in schedule “A” and or schedule “B”.
 - d. That the National Police Service be directed to provide security during the survey and valuation of the properties in question.
 - e. Costs of this application be provided for.
2. It is the Applicant’s case is that the 1st Respondent has been intermeddling with the property of the deceased herein since 2012 to the detriment of the other beneficiaries. It is also her case that if an order for maintenance of status quo is not issued she will suffer loss. She averred, through her counsel, that she has been denied access to the properties and business records and or financial records, in schedules “A” and “B” of the assets listed in the judgement of 4th November 2022. She further averred that she can only access the same via an order of this Court and that it shall be necessary for the National Police Service to provide security so that the exercise can be conducted.
3. In response the 1st Respondent filed a Replying Affidavit sworn on 17th February 2023. In the said affidavit the Respondent dismissed the Applicant’s allegations and stated that the same are unsubstantiated. He deposed that he previously filed a detailed audit report of the assets of the deceased’s estate as ordered by this court and that there is therefore sufficient information which the Applicant can access that is available in the court record.
4. He stated that most companies and properties listed in the grant were not solely held by the deceased person and some of his shares have been disposed of in a defunct settlement agreement while others are intertwined with disputes in the co-owners’ estates. He averred that the properties in schedule B are being disposed of to third parties. The Respondent deposed that there are two matters pending in court namely, CMCC 051 of 2021 and CMCC 001 of 2021 in which different properties have been sold to third parties by an administrator of the estate of Jaswant Singh Dhanjal (deceased). It is his position that the Applicant has refused to participate in the process of recovering part of the estate from third parties who acquired it illegally.
5. He further stated that the Applicant has been collecting rent for properties in London which she has not accounted for. The Respondent averred that the Applicant is fighting him instead of lending a hand so that what has been lost through the acts of third parties can be recovered. He stated that he is also a beneficiary of the estate and his effort to recover what the estate lost through the defunct settlement agreement is what has been termed as intermeddling. He indicated that his only concern is on the collection of the assets of the estate.
6. On the companies he stated that he has no control over the same as his father’s share is only a third shareholding which does not override the position of the other shareholders nor the fiduciary duties of the directors. He deposed that companies are bound by their Memorandum and Articles of Association.
7. He further termed the application herein an abuse of court process and urged the court to dismiss the same with costs.
8. Mr. Obonyo, counsel for the Applicant filed a Further Affidavit in response to the Respondent’s Replying Affidavit. He stated that pursuant to the judgement of this court and subsequent orders



- issued on 6th December 2022 the assets listed in schedule “A” and items 20-23 under category “B” are to be shared equally among the Applicant, 1st Respondent and Jasdev Singh Dhanjal (minor) respectively.
9. Counsel further stated that that the 1st Respondent did not include the Applicant in CMCC No.051 of 2021 and CMCC No.001 of 2023 as a co-administrator neither did he seek her consent to commence the proceedings on behalf of the estate of the deceased. It was deposed that neither the court nor the 1st Respondent has made a formal request for the Applicant to account for the rent she is allegedly collecting from the property in London.
 10. When the matter came up for hearing on 3rd March 2023 counsel for the Applicant Mr. Obonyo submitted that pursuant to the judgement that this Honourable Court delivered on 4th November 2022 the Applicant is entitled to 1/3 of the estate of the deceased. It was urged that the 1st Respondent previously applied for grant of representation of the estate in exclusion of the Applicant, which grant was later revoked. For that reason, the Applicant sought an audit of the estate for the period from 2012 when the 1st Applicant was in sole custody thereof.
 11. In rejoinder Mr. Githara, counsel for the 1st Respondent submitted that the 1st Respondent has been audited severally as he was subjected to intensive audit after the revocation of the previous grant. He further submitted that the 1st Respondent discovered that some properties of the estate had been encroached and took the initiative to protect the estate. He urged the Applicant to participate in the administration of the estate.
 12. On the companies that had been mentioned by the Applicant, counsel reiterated the 1st Respondent’s position that they are jointly owned and thus transfer of shares can only be done in accordance with the law. It was submitted that the 1st Respondent has not barred the Applicant from carrying out administration of the estate or from conducting transfer of the assets of the estate as long as they are done in accordance with the law.
 13. I have considered the application, the responses thereto and the rival submissions by counsels for both parties and the only issue that emerges for determination is whether an order for the audit of the estate of the deceased from 2012 should issue.
 14. The Applicant’s case is that that the 1st Respondent previously applied for grant of representation without involving her, which grant was later revoked, hence the reason why she wants an audit of the estate for the period from 2012 when the 1st Respondent was in sole custody of the estate. The 1st Respondent on the other hand has argued that he has already complied with the provision of the law on provision of full and accurate account of the estate of the deceased.
 15. The deceased herein died on 15th July, 2010. The 1st Respondent petitioned for grant of representation which was issued on 19th December 2013 and confirmed on 14th February 2014. The said grant was revoked via consent entered into and adopted as the orders of the court on 26th November 2018 and a fresh grant of letters of administration made and issued on the same date to the Applicant and the 1st Respondent. The same was confirmed and a Certificate of Confirmation of Grant was issued on 11th November 2022.
 16. Vide the consent dated and filed on 26th November 2018 the 1st Respondent was ordered to provide full and accurate account of the estate since 19th December 2012 to the date of consent as follows:
 - ...that Nirmal Singh Dhanjal by 31st March, 2019:
 - a. Provide a full and accurate account of the estate from 19th December, 2013 to the date of the filing of this consent.



- b. Make full disclosure of all the contracts, arrangements, agreements, undertakings, litigations etc he has entered into, given and/or been involved in on behalf of the estate...”

17. In response the 1st Respondent filed replying affidavits on 14th May 2019 and 28th June, 2019 giving what he described as full and accurate statement of account of the estate. The Applicant herein then filed an Application dated 28th January 2020 seeking revocation of the grant issued on 26th November 2018 to the 1st Respondent herein on the grounds that he had filed the statements of accounts out of the time which were also inadequate and riddled with material non-disclosures and misrepresentations. Upon hearing the application this honourable court in its ruling delivered on 5th May 2020 declined to revoke the grant and gave the following orders in respect to the accounts of the estate:

“...Nirmal Singh Dhanjal shall within 30 days file in court an affidavit setting out:

- i. His dealings with the estate’s 25% share in the earnings from Dhanjal Investments Limited.
- ii. His dealings with the rental income from the Tudor house and Godown.
- iii. The number of shares the deceased holds in Merryfield Limited.
- iv. What became of the deceased’s shares in Dhanjal Brothers Limited.
- v. Whether Plot No.9240/I/MN belonged to the deceased, when and by whom the same was transferred to Hakimi Glass Mart Limited...”

18. In compliance with the orders of 5th May, 2020 the 1st Respondent filed a replying affidavit sworn and filed on 26th May 2020.

19. Section 83(h) of the [Law of Succession Act](#) provides that an administrator has the duty to:

“to produce to the court, if required by the court, either of 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”

20. To emphasise on the provision of Section 83 of the [Law of Succession Act](#) the court in the case of In re Estate of Des Raj Gandhi (Deceased) [2021] eKLR stated,

“From the foregoing, the duty to account for the assets, liabilities and dealings of any estate purely lies on the personal representatives. There is no short cut about it. It is a statutory obligation to which the administrator of an estate must adhere to without any amount of discretion.”

21. From the Court’s record it is evident that the issue of production of full and accurate account of the estate and or audit of the same was raised severally before this Honourable Court by the Applicant before and after the confirmation of grant. Further it is evident that this honourable court dealt with the said issue conclusively, amongst other issues, resulting in the confirmation of the grant vide the judgement dated 4th November 2022. It would appear to me that the 1st Respondent has provided accounts of the estate as directed by the Court. It may be the case that the Applicant is dissatisfied by those accounts. I do not however think that filing another application seeking orders that are similar to those which have previously been sought is helpful. In my view such an action is an abuse of the court



process. I am guided by the case of Satya Bhama Gandhi versus the Director of Public Prosecutions & 3 others [2018] eKLR where the court stated,

“The black law dictionary defines abuse as “Everything which is contrary to good order established by usage that is a complete departure from reasonable use, “An abuse is done when one makes an excessive or improper use of a thing or to employ such thing in a manner contrary to the natural legal rules for its use”.

The concept of abuse of court/judicial process is imprecise. It involves circumstances and situation of infinite variety and conditions. It is recognized that the abuse of process may lie in either proper or improper use of the judicial process in litigation. However, the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponents.

The situation that may give rise to an abuse of court process are indeed in exhaustive, it involves situations where the process of court has not been or resorted to fairly, properly, honestly to the detriment of the other party. However, abuse of court process in addition to the above arises in the following situations:-

- a. Instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.
- b. Instituting different actions between the same parties simultaneously in different court even though on different grounds.
- c. Where two similar processes are used in respect of the exercise of the same right for example a cross appeal and respondent notice.
- d. Where an application for adjournment is sought by a party to an action to bring another application to court for leave to raise issue of fact already decided by court below.
- e. Where there no iota of law supporting a court process or where it is premised on recklessness. The abuse in this instance lies in the inconvenience and inequalities involved in the aims and purposes of the action.
- f. Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.
- g. Where an appellant files an application at the trial court in respect of a matter which is already subject of an earlier application by the respondent at the Court of Appeal.
- h. Where two actions are commenced, the second asking for a relief which may have been obtained in the first. An abuse may also involve some bias, malice or desire to misuse or pervert the course of justice or judicial process to the irritation or annoyance of an opponent.

22. In paragraph 4 of the Replying Affidavit the Applicant’s counsel deposed that:- “on 26th November 2018 the Court had ordered the 1st Respondent to provide the Applicant with a full and accurate account of the estate since 19th December 2012. That todate the said 1st Respondent has failed, refused



and or neglected to do so. The purpose of the Notice of Motion herein is to seek orders to compel the 1st Respondent to give effect to the various court orders”. (emphasis added).

23. With respect, I do not see how, if it was found that the 1st Respondent is non-compliant with the previous orders of this Court, filing another application would help. The proper thing to do, where there is non-compliance, in my view, would be to procure the enforcement of the court orders. It is open for the Applicant to apply to have the 1st Respondent punished for contempt of Court if it is indeed true that he has disobeyed orders of the Court. As I have already found filing another application, similar to those that have been filed before, is an abuse of the Court process.
24. The upshot of the above is that the application herein lacks merit and the same is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED IN MOMBASA THIS 19TH DAY OF MAY 2023 VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of:

Mr. Buyuka Obonyo for the Applicant

No appearance for the Respondent

Winnie Migot – Court Assistant

