



In re Estate of Sukhvinder Singh Balwat Singh Dhillon (Deceased) (Succession Cause 106 of 2017) [2023] KEHC 17934 (KLR) (Family) (15 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17934 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 106 OF 2017
MA ODERO, J
MAY 15, 2023
IN THE MATTER OF THE ESTATE OF SUKHVINDER
SINGH BALWAT SINGH DHILLON (DECEASED)

BETWEEN

LILIAN SETU APPLICANT

AND

HARJEET KAUR SUKVINDER SINGH DHILLON 1ST RESPONDENT

BHUPINDER KAUR DHILLON 2ND RESPONDENT

RULING

1. Before this Court for determination is the summons dated 15th February 2022 by which the Applicant Lillian Setu seeks the following orders:-

- “1. Spent.
2. Spent.
3. That this Honourable Court be pleased to review and vary the ruling delivered herein on 18th January 2022, to the extent that it ordered the grant issued to the Applicants confirmed.
4. That the certificate of Confirmation of Grant issued to the Respondents on 18th January 2022 be set aside and/or revoked.
5. That costs of the Application be in the cause.”



2. The summons which was premised upon Section 47 of the *Law of Succession Act*, Cap 160, Rules 63(1) 73 of the *Probate and Administration Rules* and any other enabling provisions of the law was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondents Harjeet Kaur Sukhvinder Singh Dhillion And Bhaupinder Kaur Dhillon opposed the application through the Grounds of Opposition dated 21st November 2023 on which they raised the following objections:-
 - 1) The application is an abuse of the court process.
 - 2) Grant of Letters of Administration intestate and Certificate of Confirmation of Grant dated 18th January 2022 were issued.
 - 3) The Applicant has not established any locus to bring an action against the Respondents.
4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 8th September 2023 whilst the Respondents relied upon their written submissions dated 22nd November 2022.

Analysis and Determination

5. This Succession Cause relates to the estate of the late Sukhvinder Singh Balwat Singh Dhillon (hereinafter ‘the Deceased’) who died intestate on the 14th August 2016. The Deceased was survived by the following persons:-
 - (a) Harjeet Kaur Sukhvinder Singh Dhillon - Widow
 - (b) Bhaupinder Kaur Dhillon - Daughter
 - (c) Karandeep Singh Dhillon - Son
6. Following the demise of the Deceased the son of Deceased filed a Petition dated 4th May 2017 for Grant of Letters of Administration Intestate. The Grant was issued to the him on 25th July 2017. The Grant was duly confirmed on 10th July 2018.
7. The Administrator of the estate Karandeep Singh Dhillon later died on 15th September 2020. The widow and daughter of Deceased then filed an application dated 29th September 2020 seeking revocation of the confirmed Grant issued on 10th July 2018 as the same had become inoperative due to the demise of the Administrator. They prayed that fresh certificate of confirmed Grant be issued in their names.
8. The Applicant Lillian Setu avers that she is a daughter of the Deceased arising from a relationship which the Deceased had with her mother Alice Kashu. She sought to be accorded with reasonable provision from the estate of the Deceased.
9. Hon. Justice Muchelule (as he then was) delivered a Ruling on 18th January 2022 in which he allowed the application to revoke the Grant and further ordered that a fresh certificate of Confirmed Grant be issued to the Respondents herein Harjeet Kaur Sukhvinder Singh Dhillion and Bhaupinder Kaur Dhillon.
10. The Applicant then filed this present application seeking a review of the ruling delivered on 18th January 2022. She claims that the courts erred in finding that the Respondents were not aware that she had filed a citation when in actual fact the Respondents had filed a Reply to the Citation.



11. Further the Applicant submitted that no application for reasonable provisions can be made after confirmation of Grant therefore she has effectively been locked out of inheriting from the estate of the Deceased.
12. As stated earlier the application was opposed by the Respondents.

Analysis and Determination

13. I have carefully considered the application before this court, the Grounds of opposition filed by the Respondents as well as the written submissions filed by both parties. The only issue for determination is whether this application for review and setting aside of the judgement delivered on 18th January 2022 ought to be allowed.

14. Section 80 of the *Civil Procedure Act* provides as follows:-

“ Any person who considers himself aggrieved-

- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgement to the court, which passed the decree or made the order, and the court may or make such order thereon as it thinks fit.

15. Order 45 Rule 1 of the *Civil Procedure Rules*, 2010 provides as follows:-

“ Any person considering himself aggrieved-

- a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for review of judgement to the court which passed the decree or made order without unreasonable delay.”

16. In the case of *Republic v Advocates Disciplinary Tribunal Ex-Parte Apollo Mboya* (2019) eKLR, Mativo J. held that:-

“ A clear reading of the above provisions shows that Section 80 gives the power of review while Order 45 sets out the rules. The rules restrict the grounds for review. They lay down the jurisdiction and scope of review. They limit review to the following grounds-

- a. discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;
- b. on account of some mistake or error apparent on the face of the record, or



- c. for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”

17. The first ground upon which a judgement /ruling may be reviewed is the discovery of new and important evidence. The Applicant has not alleged that she has discovered new or important evidence which was not within her knowledge at the time when the application dated 29th September 2020 was being canvassed.
18. The second ground for review is an error apparent on the face of the record. Such an error must be obvious from the face of the record. It must not be matter of argument, conjective, allegation or implied.
19. The Applicant has alleged that the court erred by holding that the Respondents were not aware that she had filed a Citation when in actual fact, the Respondents had replied to the Citation by way of a Replying Affidavit.
20. The Applicant also claimed that the court erred in issuing a fresh certificate of Confirmed Grant and by holding that the Applicant could file an Application for reasonable provision against the estate. According to the Applicant her window to file such an application was closed once the Grant was confirmed.
21. The above ‘errors’ referred to by the Applicant cannot be deemed to amount to ‘new’ evidence. There were matters which were well within the knowledge of the Applicant at the time when the application was being canvassed.
22. The issues which the Applicant is now raising were considered and determined in the ruling delivered on 18th January 2020. They are therefore Res Judicata and it is not open to this court to revisit the same issues. The Applicant has not placed any new evidence warranting a review of the Ruling.
23. The matters being raised by the Applicant as points for review are infact allegations that the trial Judge misapplied and/or misapprehended the law. In those circumstances the only avenue open to the Applicant was to file an appeal not to file an application for review of the ruling.
24. Having said that, the Applicant is not left without any remedy. The *law of Succession Act* provides that a party who is aggrieved by the issuance of a Grant may file a summons for revocation/annulment of said Grant under Section 76 of the Act. If the Applicant feels that as a daughter of the Deceased she has been excluded from the estate then she remains at liberty to file a summons to revoke the Grant under Section 76.
25. Finally I find no merit in the application dated 15th February 2022. The same is hereby dismissed in its entirety. Costs are awarded to the Respondents.

DATED IN NAIROBI THIS 15TH DAY OF MAY, 2023.

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MAUREEN A. ODERO

JUDGE

