



REPUBLIC OF KENYA



In re Estate of Sadhu Singh Nihal Singh Sham Singh Bamrah (Deceased) (Succession Cause 214 of 1998) [2023] KEHC 21813 (KLR) (Family) (7 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21813 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 214 OF 1998
PM NYAUNDI, J
JULY 7, 2023**

BETWEEN

HARJIT KAUR BAMRAH APPLICANT

AND

**THE ESTATE OF THE LATE TARLOK SINGH BAMRAH
(DECEASED) 1ST RESPONDENT
JASWINDER SINGH BAMRAH 2ND RESPONDENT
DALJEET KAUR MUDHAR 3RD RESPONDENT
SATPAL SINGH BAMRAH 4TH RESPONDENT
GURPIT SINGH BAMRAH 5TH RESPONDENT**

RULING

1. The Applicant, presents Application dated June 25, 2022 under Article 159 of the Constitution of Kenya, Sections 1A, 1B and 3A of the Civil Procedure Act Cap 21, Orders 75 and 76 of the Civil Procedure Rules, 2010 Rules 39(a), 75 and 76 of the Court of Appeal Rules 2010, Rule 59 of the Probate rules 1980 and seeks the following orders that -
 1. Leave be granted allowing the Applicant to Appeal against the Ruling of Hon Justice Aggrey Muchelule delivered on June 14, 2021.
 2. Costs of this Application to abide the Appeal.
2. The Application is supported by Affidavit sworn by the Applicant on June 21, 2021, the respondents oppose the application and have filed grounds of opposition dated September 22, 2021.



3. In essence, the Applicant is seeking leave to appeal as there is no automatic right of Appeal in succession matters to the Court of Appeal. The Applicant submits that she is entitled to exercise her constitutional right of appeal and that denying her leave to appeal would be tantamount to violating her right to access to justice as enshrined under Article 48 of the Constitution.
4. The draft memorandum of appeal enumerates 12 grounds of appeal. The Applicant argues that she ought to have been allowed to introduce new evidence that would challenge the validity of the will.
5. She maintains that she has met the criteria for granting leave as her appeal is arguable.
6. The Respondents counter the assertion of the Applicant and submit that there are no grounds which will merit serious judicial consideration in the Court of Appeal. The Respondents contend that Litigation must come to an end.
7. At paragraph 6 of the impugned ruling the Learned Judge observed that the Applicant sought to review the earlier decision of the Court delivered on February 8, 2021, on the basis that she had come by new and important evidence. The specific evidence was that the Document examiner has submitted a report and tendered an opinion that Kannanunpurath Saydu Mohamed Abdul Karim's is not the one who had signed the will as a witness, this she argues goes to the validity of the will.
8. The Court further observed that Kannanunpurath Saydu Mohamed Abdul Karim had sworn an affidavit on November 20, 2020 confirming that he had witnessed the will.
9. The Applicant, correctly raises that the Constitution guarantees the right to be heard as the right to access to justice, this right must be weighed against the right of a successful litigant to enjoy the fruits of their judgment and also the right to have matters disposed of without delay. These are equally access to justice issues.
10. The scales will tilt in favour of a litigant who wishes to challenge a decision by way of appeal if they are able to demonstrate that the intended appeal is arguable and that the Respondent will suffer no prejudice.
11. In the instant case, the Applicant wishes to go further down the tunnel in challenging the validity of the will. She is armed with the report of a document examiner who has opined that the signature on the will does not belong to Kannanunpurath Saydu Mohamed Abdul Karim. This is the silver bullet she is armed with.
12. The said Kannanunpurath Saydu Mohamed Abdul Karim has sworn an affidavit declaring that he was present at the execution of the will by the deceased and that he witnessed the execution of the will.
13. In my mind I do not see how the intended appeal has any realistic prospects of success. On this score I adopt the following words of the Court in the decision in John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure and 3 Others [2015] eKLR the Court of Appeal stated;

"The rationale behind res judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res judicata ensures the economic use of court's limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients



in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably.'

14. Although the Court in that case was discussing the principle of res judicata I think these words ring true for the need for the court to turn the tap off when it comes to concluding matters. With the illumination cast by the light of the law, it is possible to see where the path chosen by the Applicant leads. In this instance it is a dead end.
15. I find that in the current case the principles guiding courts in dispensing justice tilt in favour of the Respondents.
16. For this reason, the Application dated June 25, 2021 is dismissed, leave to appeal against the ruling delivered on June 14, 2021 is denied.
17. Costs to the Respondent.

It is so ordered

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF JULY 2023.

P M NYAUNDI

JUDGE

