



In re Estate Surjeet Singh alias Surjeet Singh Chass and also known as Surjeet Singh Chass (Deceased) (Succession Cause E1103 of 2021) [2023] KEHC 19698 (KLR) (Family) (4 July 2023) (Ruling)

Neutral citation: [2023] KEHC 19698 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE E1103 OF 2021

EKO OGOLA, J

JULY 4, 2023

IN THE MATTER OF THE ESTATE SURJEET SINGH ALIAS SURJEET SINGH CHASE AND ALSO KNOWN AS SURJEET SINGH CHASS(DECASED)

RULING

1. Before the court is a Summons Application dated 18th May, 2023 where the Applicant prays for the following orders:
 - 1) That this Honorable court be pleased to review the Orders made on 4th August 2022 confirming the grant to include additional information regarding the Estate of the Deceased Surjeet Singh Alias Surjeet Singh Chass and Also Known As Surjeet Singh Chass
 - 2) That this honorable court be pleased to add the new assets that were not available or had not been discovered at the time of distribution, properties belonging to the deceased, being:
 - a) Ninety-Three Thousand, Three Hundred and Twenty-Two [93,322] shares in Oriental Commercial Bank Limited; Share certificate Number xxxx
 - b) Two Thousand Five Hundred and Four [2504] shares in Oriental Commercial Bank Limited, Share Certificate Number xxxx
 - c) Thirty-Seven Thousand, Three Hundred and Twenty-Eight [37,328] shares in Oriental Commercial Bank Limited; Share Certificate number xxxx
 - 3) That this honorable court be pleased to order the additional assets vest in Sarabjit Kaur Chass as the sole beneficiary
2. The application is premised upon Rule 63, 73 of the Probate and Administration Rules, Section 80 of the *Civil Procedure Act* and Order 45 of the *Civil Procedure Rules* Cap 21 Laws of Kenya. The Application is supported by the Affidavit of Sarabjit Kaur Chass sworn on 18th May, 2023.



3. In this case, the deceased died on 17th April, 2021. Consequently, Sarabjit Kaur Chass was issued with Grant of letters of Administration to the estate of the deceased on 8th September, 2021. The Grant was subsequently confirmed on 4th August, 2022.
4. The Applicant states that when petitioning for letters of Administration, the shares mentioned above were left out from the list of the assets of the estate of the deceased. The Applicant has provided share certificates in proving the ownership of the shares by the deceased.
5. The Applicant seeks review to the Order of 4th August 2022 which is the Confirmation of Grant to accommodate those shares which were not available at the time of distribution.
6. The Application is unopposed.
7. Rule 63 of the Probate and Administration Rules recognizes that the provisions of Order 45 of the Civil Procedure Rules, are some of the specific provisions of the Civil Procedure Rules applicable to succession proceedings. It states that;

“Save as in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Order 5, rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45 and 50 (Cap. 21, Sub. Leg.), ... shall apply so far as relevant to proceedings under these Rules.”

8. Under Order 45 of the Civil Procedure Rules, review can only be allowed under the following circumstances:

Discovery of new and important matter of evidence which, after 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.

2. Mistake or error apparent on the face of the record.

3. Any other sufficient reason which may make the court to review its order.

9. In *John Mundia Njoroge & 9 others v Cecilia Muthoni Njoroge & another* [2016] eKLR

The Court held;

“...the only provisions of the Civil Procedure Rules imported to the Law of Succession Act are Orders dealing with service of summons, interrogatories, discoveries, inspection, consolidation of suits, summoning and attending witnesses, affidavits, review and computation of time.

Clearly, Order 45 relating to review is one of the Civil Procedure Rules imported into succession practice by rule 63 of the Probate and Administration Rules. An application for review in succession proceedings can be brought by a party to the proceedings, a beneficiary to the estate or any interested party. However, the application must meet the substantive requirements of an application brought for review set out in Order 45 of the Civil Procedure Rules.”

10. In *the matter of the estate of Geoffrey Kinuthia Nyamwinga* (deceased) [2013] eKLR

The court stated;



“A review under order 45 of the Civil Procedure Rules may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record, or for any sufficient reason.”

11. *In re estate of Charles Kibe Karanja (deceased)* [2015] eKLR

The court stated;

“Where known assets are omitted from the schedule of the property to be distributed or the name of a known beneficiary or heir is inadvertently left out of the confirmation application, an application ought to be made for review of the confirmation orders to accommodate the said assets or beneficiaries on the basis that the said assets or heirs were left out by mistake or error. Where assets are discovered after the Court has confirmed the grant or a heir or survivor of the deceased who had previously been unheard of materializes after distribution, the Court may review its orders made at the point of confirming the grant on the ground of discovery of new and important evidence that was not available at the time the grant was being confirmed.....

12. The Applicant avers that the shares were not included in the distribution list during the confirmation of Grant.

13. In *National Bank of Kenya Ltd v Njau* [1995-1998] 2EA 249 (CAK); at page 253 of the judgment, the Court stated: -

“A review may be granted whenever the Court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established.”

14. There has been no objection raised by the other beneficiaries or by any other person with regard to this application. The Applicant has attached copies of the Share Certificates marked SK-1 Certificates numbers xxxx, xxxx and xxxx.

15. In this regard, the Application dated 18th May, 2023 is hereby granted.

16. Costs shall be in the cause

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF JULY 2023.

E.K. OGOLA

JUDGE

Ruling delivered online the presence of:

Mr. Sala for the Applicant

Ms. Gisiele Court Assistant

