



REPUBLIC OF KENYA



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In re Estate of Inderjit Singh Hanspal (Deceased) (Succession Cause E235 of 2022) [2023] KEHC 24894 (KLR) (Family) (6 October 2023) (Ruling)

Neutral citation: [2023] KEHC 24894 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E235 OF 2022
PM NYAUNDI, J
OCTOBER 6, 2023
IN THE MATTER OF THE ESTATE OF INDERJIT SINGH
HANSPAL (DECEASED)

BETWEEN

JASPRIYA KAUR HANSPAL 1ST APPLICANT

SACHNA KAUR HANSPAL 2ND APPLICANT

AND

VIJAY HANSPAL RESPONDENT

RULING

1. Before this court for determination is the summons dated 12th May, 2023 by which the Applicants, Jaspriya Kaur Hanspal and Sachna Kaur Hanspal seek the following orders:-
 1. Spent.
 2. That the confirmed grant issued on 25th January 2023 be revoked in its entirety and/or revoked to the extent that the following assets be removed from the estate's list of assets to be administered by the Administrator/Respondent namely: -
 - i. LR. NO. 209/74996- Nairobi.
 - ii. Shares relating to Alcon Holdings Ltd.
 3. That pending the hearing and determination of the subject application, the administrator/ Respondent be restrained by way of an injunction from dealing in whatsoever manner with the assets listed in 2 (i)- (ii) hereinabove.



4. That the costs of this Application be provided for.
5. That the Honourable Court be at liberty to make such other or further orders as it may deem fit for the ends of justice to be met.
2. The Summons is brought pursuant to Sections 76 (a), (b) and (c) of the *Law of Succession Act*, Rule 73 of the *Probate and Administration Rules* and all enabling provisions of the law and is supported by the affidavit of Japriya Kaur Hanspal sworn on 12th May 2023.
3. The Respondent, Vijay Hanspal opposed the summons through his Replying Affidavit dated 5th June 2023.
4. The summons was canvassed by way of written submissions. The Applicants filed written submissions dated 28th September 2023 whilst the Respondent's are dated 2nd October 2023. I have had opportunity to carefully consider the pleadings, submissions and precedents cited.

Summary

5. This Succession Cause relates to the estate of Inderjit Singh Hanspal (hereinafter 'the Deceased') who died testate on 11th September 2014. The Deceased left behind a written Will dated 12th June 2013 in which he detailed the manner in which he wished his estate be distributed.
6. The Deceased was survived by the following persons-
 - a. Parminder Kaur Hanspal- wife.
 - b. Vijay Hanspal- son.
 - c. Jesse Jessnaam Jasnam Kaur Hanspal –daughter.
7. The assets left behind by the Deceased as indicated in the affidavit in support of Petition for Probate for letters of Administration with written will annexed dated 2nd February 2022 included the following;
 - a. Land Reference Number 209/7496 (Original Number part of 6863/69) Grant Number I.R. 24541.
 - b. One Thousand Five Hundred (1500) shares in Alcon International Limited (Company Registration No. 9648).
 - c. Three hundred and thirty-three (333) shares in Alcon Holdings Limited (company Registration No. 14689).
 - d. One hundred (100) shares of the one thousand (1000) shares issued by Alcon Aviation Limited (company Registration No. 30091).
8. In his written Will the Deceased appointed his son, Vijay Hanspal as Executor and Administrator. The said Executor filed in court the summons for Grant of Probate dated 2nd February 2022. A Grant was duly issued to him on 16th May 2022. The said grant was confirmed on 25th January 2023.
9. The Applicants are the children of the late Davinder Singh Hanspal who was a brother to the Deceased. Kultar Singh Hanspal, Inderjit Singh Hanspal and Davinder Singh Hanspal (all Deceased) were directors and shareholders of Alcon Holdings Limited.
10. They contended that there is a dispute on the shares held by the three directors and also on the ownership of L.R. No. 209/7496. Proceedings have been instituted to determine the ownership of these properties. The Applicants argue the Respondent obtained another Grant in the United



Kingdom on 23rd June 2015. The Grant was resealed in Kenya on 18 June 2018 and used to file Succession Cause No. 2244 of 2015.

11. They stated that the Grant issued in the United Kingdom was fraudulent. They argued that the Respondent failed to disclose the existence of the above suits when petitioning for letters of administration and therefore, the same should be revoked

Analysis And Determination

12. I discern the following as the issues for determination
 - a. Whether the Grant issued on 25th January 2023 should be revoked
 - b. Who should pay costs
13. On the 1st issue, the grounds upon which a Grant may be revoked are set out in Section 76 of the [Law of Succession Act](#) which provides as follows:-

Revocation or annulment of grant

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) That the proceedings to obtain the grant were defective in substance;
 - (b) That the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
 - (c) That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
 - (d) That the person to whom the grant was made has failed after due notice and without reasonable cause either—
 - (i) To apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) To proceed diligently with the administration of the estate; or
 - (iii) To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
 - (e) That the grant has become useless and inoperative through subsequent circumstances.'
14. This provision of the law was expounded upon by the court in the case of *Re Estate Of Prisca Ong'aya Nande (Deceased)* 2020 eKLR where it was held as follows: -

'A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for



appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstance, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore becomes unqualified to hold any office of trust.'

15. The Applicants contend that there is a pending suit at the Environment and Land Court being Nairobi ELC 1218 of 2013 and Nairobi Commercial & Admiralty Judicial Review No. E032 of 2021 touching on the ownership of land and shares in the company. They argued that the Respondent did not disclose to the court that these suits exist and until they are determined, these properties cannot be distributed.

16. The Respondent on the other hand argues that Environment and Land Court made an order for eviction of the applicant and payment of mesne profits. He stated that the suit property is registered in his late father's name and therefore, there is no dispute on ownership. He contended that his father's shares in the company are not disputed and therefore, not subject to litigation. He urged the court not to revoke the grant on these grounds.

17. In *Albert Imbuga Kisigwa v Recho Kawai Kisigwa*, Succession Cause No.158 OF 2000 the Court held,

The power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order for revocation or annulment of a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.

18. The Summons for revocation is dated 12th May 2023, it was filed after the Confirmation of Grant. *In Re Estate of Alice Mumbua Mutua (Deceased)* [2017] KLR (Musyoka J) said as follows on the same:

“...The *Law of Succession Act*, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

27. Disputes of course do arise in the process. The provisions of the *Law of Succession Act* and the *Probate and Administration Rules* are tailored for resolution of disputes between the personal representatives of the deceased and the survivors, beneficiaries and dependants. However, claims by and against third parties, meaning persons who are neither survivors of the deceased nor beneficiaries, are for resolution outside of the framework set out in the *Law of Succession*



Act and the Probate and Administration Rules. Such have to be resolved through the structures created by the *Civil Procedure Act* and *Rules*, which have elaborate rules on suits by and against executors and administrators.

28. The *Probate and Administration Rules* recognize that, and that should explain the provision in Rule 41(3), which provides as follows –
- ‘Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or property comprising it to abide the determination of the question in proceedings under ... the *Civil Procedure Rules* ...’
29. Clearly, disputes as between the estate and third parties need not be determined within the succession cause. The legal infrastructure in place provides for resolution elsewhere, and upon a determination being made by the civil court, the decree or order is then made available to the probate court for implementation. In the meantime, the property in question is removed from the distribution table. The presumption is that such disputes arise before the distribution of the estate, or the confirmation of the grant. Where they arise after confirmation, then they ought strictly to be determined outside of the probate suit, for the probate court would in most cases be functus officio so far as the property in question is concerned. The primary mandate of the probate court is distribution of the estate and once an order is made distributing the estate, the court’s work would be complete. The proposition therefore is that not every dispute over property of a dead person ought to be pushed to the probate court. The interventions by that court are limited to what I have stated above.” (Emphasis added)
19. In the instant case the Applicant has moved the Court post the confirmation of the grant. The documentation that is before shows me that the deceased’s shares in ALCON Holdings are not the centre of the dispute in Nairobi Commercial & Admiralty Judicial Review No. E032 of 2021. The dispute as I understand it relates to the shares of Kutar Singh Hanspal (deceased) and Davinder Singh Hanspal (deceased) both brothers of the Deceased herein.
20. With regard to LR. NO. 209/74996- Nairobi, both parties concede that the land is registered in the name of the deceased. That the matter was litigated vide ELC No. 2218 OF 2013 and the Applicant herein sought stay of execution and appeal vide Court of Appeal Civil Application No. E199 of 2022. It would appear that there is an appeal pending against the judgment of the ELC Court.
21. It is clear that the grounds upon which the revocation of grant is sought is not that the Applicants are beneficiaries to the Estate but rather that they have a claim that is averse to that of the Respondent. I concur with the reasoning of Musyoka J cited above that where the dispute arises after confirmation of grant involving a third party it is best resolved outside of the Probate Suit.
22. The grant herein having been confirmed and the property distributed, this Court is functus officio. As stated the Applicants are actively litigating these matters in different forums, which in my view are the proper forums.
23. In light of the foregoing the Application is dismissed in its entirety with costs to the Respondent.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 6TH DAY OF OCTOBER 2023.

P. NYAUNDI

HIGH COURT JUDGE

