



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

SUCCESSION CAUSE NO. 347 OF 2008

IN THE MATTER OF THE ESTATE OF GURUMUKH SINGH NARAN SINGH

PANDHAL alias GURMUKH SINGH NARAIN SINGH PANDHAL (DECEASED)

JAGIT SINGH GURUMUKH PANDHAL.....OBJECTOR/APPLICANT

VERSUS

PRITAM KAUR PANDHAL.....ADMISTRATOR/RESPONDENT

TEJINDER SINGH PANDHAL.....NECESSARY PARTY /RESPONDENT

JUDGMENT

1. The deceased herein died testate on 12th August, 2008 while domiciled in Mombasa. Prior to his death he had executed a written will dated 12th June, 2007. In the said will, he appointed his wife Pritam Kaur the first petitioner/ respondent herein as the sole executrix. He was survived by the said widow, the applicant, 2nd respondent and 3 daughters.

2. The deceased bequeathed his entire estate to his wife and in the event he and his wife died simultaneously, all his estate to devolve to his son Tejinder Singh Gurumukh the second respondent herein.

3. On 18th November 2008, Pritam Kaur petitioned for a grant of probate of written will. The estate was duly gazetted on 30th April, 2009 and a grant of probate of written will made on 18th June, 2009 and issued on 7th August, 2009. The same was confirmed on 28th May, 2010 and the following properties shared out in accordance with the will.

i. L.R 6065 Sec V registered as CR.29120 ½ SARE

ii. Mombasa/block XIX/150

iii. Mombasa/Block XXV/15

iv. Mombasa /Block XXV/14 total No.3& 4 -1/2 share

v. Mombasa/Block/XV/16

vi. Mainland 1747/1/MN

vii. Shares in central Furniture shop Ltd

viii. Bank of India - being held

-Gurmukh Singh Pandhaal personal account A/c 11011201100

-Gurmukh Singh Pandahaal A/c No 2102249100

Viii CFC Stanbic Bank

-Gurmukh Singh Pandahaal A/C No 0020005644

-Pandahgaal G.S. A/c No. 00200056502

4. Vide summons for rectification dated 26th June, 2012 the certificate of confirmation of grant was reviewed and amended to include properties that were allegedly left out namely;

i. 1.2 share in sub No 13569/1/MN

ii. ½ share in Sub No. 13565/1/MN

iii. ½ share in sub No. 13566/1/MN

iv. ½ share in sub-no13570/1/MN

5. It is however, not clear from the record whether the application was heard and determined.

6. Through an application dated 20th September, 2018 Jagjit Gurmukh Pandhaal one of the sons now the objector/applicant moved to this court seeking revocation of the grant and reasonable provision. The application attracted a preliminary objection from the respondents being the petitioner (widow - 1st respondent) and Tejinder Singh Pandhaal his brother (2nd respondent) contending that the objection was time barred the same having been filed after confirmation of the grant thus offending Section 30 of the Law of Succession Act.

7. The respondents further filed a replying affidavit sworn on 15th November, 2018 and filed the same day opposing the application of 20th September, 2018. The applicant filed a further affidavit on 9th April, 2018.

8. Subsequently, the applicant /objector withdrew the application of 20th September, 2018 and filed a fresh one dated 30th September, 2019 seeking the following orders.

1. **THAT** there be an **ORDER** for **REASONABLE PROVISION** to be made to the Applicant in the sum of **Kshs. 300,000** per month, from the Estate of the Deceased through the Necessary Party/Respondent.

2. **THAT** an **ORDER** do issue granting the Applicant Unlimited Access to the Property Reference **LR NO. 1747/SECTION 1/MN; Nyali Mombasa;**

3. **THAT** an **ORDER** do issue **RESTRAINING** the Respondents, whether by themselves, their Agents, Servants or whosoever claiming through them, from dealing with the Assets of the Estate of the Deceased, viz:-

a) Property Reference LR MOMBASA/BLOCK XXV/14

(Palm Court Building, Nkrumah Road, Mombasa);

b) Property Reference LR MOMBASA/BLOCK XXV/15

(Palm Court Building, Nkrumah Road, Mombasa);

c) Property Reference LR 1747/SECTION 1/MN (Links Road, Nyali, Mombasa Official Residence);

d) Property Reference PLOT NO. 16/SECTION XV (Lumumba Road, Mombasa);

e) Central Furniture Shop/Show Room at PLOT NO. 16/SECTION XV (Lumumba Road, Mombasa);

f) Pandhaal Furniture Manufacturers Workshop on PLOT NO. 16/SECTION XV (Lumumba Road, Mombasa);

g) Transport Yard at Mikindani, Mombasa (approximately Two (2) Acres;

In any way, manner or form adverse to the interests of the Beneficiaries of the Estate of the Deceased.

a. **THAT** the **OCS**, Nyali Police Station, do supervise the Execution of this Order, Provide Security, Ensure no Public Disturbance ensues, and Maintain Law and Order throughout and after the Execution of this Order.

4. **THAT** the Orders subject of Prayers **3, 4, 5** and **6** hereinabove do persist throughout the pendency of the instant Proceedings.

5. **THAT** an **ORDER** do issue **DIRECTING** the Respondents to give an Inventory of the Assets and Liabilities of the Estate of the Deceased as at **20/09/2018**, together with a concise Statement of Income and Funds Expended in respect of the Estate of the Deceased **w.e.f** the date of Grant of Probate herein, within **Twenty-One (21) Days** of such Order.

6. **THAT** an Order do Issue **NULLIFYING ALL** Transactions which occurred in respect of the following Properties **AFTER** the Demise of **GURUMUKH SINGH NARAIN SINGH PANDHALL ALIAS GURMUKH SINGH NARAN SINGH PHANDALL (Deceased)**, and the said Properties do forthwith **REVERT** to the Estate of the Deceased, viz:

(a) Property Reference LR MOMBASA/BLOCK XXV/14

(Palm Court Building, Nkrumah Road, Mombasa);

(b)Property Reference LR MOMBASA/BLOCK XXV/15

(Palm Court Building, Nkrumah Road, Mombasa);

(c) Property Reference LR 1747/SECTION 1/MN (Links Road, Nyali, Mombasa Official Residence);

(d)Property Reference PLOT NO. 16/SECTION XV (Lumumba Road, Mombasa);

(e)Central Furniture Shop/Show Room at PLOT NO. 16/SECTION XV (Lumumba Road, Mombasa);

(f)Pandhaal Furniture Manufacturers Workshop on PLOT NO. 16/SECTION XV (Lumumba Road, Mombasa);

(g) Transport Yard at Mikindani, Mombasa (approximately Two (2) Acres.

8 **THAT** the Grant of Probate made herein be revoked in its entirety.

9 **THAT** Costs of this Application be in the Cause.

9. In response, the respondents filed a Preliminary Objection dated 14th October 2019 which was a replica of the previous one.

10. The court heard the preliminary objection and delivered its ruling on 9th October, 2020 thus dismissing the objection on account of time limitation as an objection for reasonable provision ought to have been filed before confirmation of the grant. The court held that the rest of the prayers were to await substantive hearing and determination. Subsequently, hearing proceeded viva voce for the application dated 30th September, 2019.

11. Briefly, the applicant's case as outlined in his affidavit in support of the application is that; He is a biological child to the deceased an Indian national who relocated to Kenya sometime 1942. That the deceased and the first respondent were married and blessed with five children namely;

i. Balvir Atkar (daughter)

ii. Harvinder Lochab(daughter)

iii. Surjit Khandola (daughter)

iv. Tejinder Singh Pandhaal (son)(2nd respondent) and

v. Jagjit Singh (objector/applicant)

12. He averred that he and the sisters have never been officially disinherited hence the claim for his rightful share in the estate. He stated that although he was a British national, residing in Spain, he used to assist his late father in running a furniture shop while on a work permit renewable after every two years.

13. It was averred that upon the death of the deceased, the 2nd respondent closed the furniture shop thus causing his work permit to cease. He claimed that the 2nd respondent proceeded to transfer to himself property No Mombasa/block XXV/14 and 15. It was the objector's claim that he got to learn of the existence of these succession proceedings sometime in February 2018 after chancing upon a gazette notice to that effect. That to secure some of the properties aforementioned (Mombasa/Block/XX/15and 14) he lodged a caution.

14. He contended that succession proceedings were instituted without his knowledge nor consent and that the estate is being plundered by the 2nd respondent who has taken advantage of their senile old mother of 85 years. That by virtue of the 2nd respondent's unlawful and unprocedural acts, he(objector) has been rendered destitute thus subjecting him to the status of being a beggar depending on hand-outs from his friends and well-wishers.

15. He further stated that his brother the 2nd respondent has restrained him from visiting their family residence at Nyali Plot 1747/Section

1/MN hence the prayer for full access. He also claimed that the 2nd respondent is solely enjoying rental income amounting to kshs 1.5 million monthly collected from the two aforesaid properties located at Palm court building and therefore demanded; kshs 400,000 monthly as reasonable provision out of the estate; Rent at 80,000 per month and school fees 30,000 per month.

16. In response, the respondents adopted the content in the replying affidavit sworn by the second respondent on 15th November, 2018 in response to the withdrawn application dated 20th September 2018. Basically, the 2nd respondent stated that, upon the death of their father, their mother (1st respondent) being the only heir to the estate as per the will took possession of the estate absolutely as the sole beneficially.

17. He however disputed the allegation that part of the estate included Pandhaal furniture shop as it was jointly owned by himself and the objector which business has since been dissolved.

18. As regards the objector's claim that Central furniture shop was part of the estate entirely, he deponed that it was jointly owned by himself and his late father in equal share. He attached a certificate of incorporation and a bundle of documents to prove equal share holding (TSP3). He stated that the transfer of Mombasa/Block XXI/14 and 15 to him, around 2013, was out of love and affection by the mother who was the registered absolute owner.

19. He further deposed that, out of love and affection, their mother transferred to the objector property No Mombasa/Block/XIX/150 ½ share in sub-section No 13570/1/MN and ½ share in sub-section 13569/1/MN. That the 1st respondent also caused him (2nd respondent) to transfer to the objector his (2nd respondent) ½ share in the said sub-section in Plot Nos. 13570/1/MN and 13569/1MN.

20. It was the 2nd respondent's averment that all along the objector accepted those transfers into his name. That he was aware that they formed part of their late father's estate which was entirely bequeathed to their mother by their father through a will. He went on to state that in May, 2012 the objector sold the Mombasa/Block XIX/150 to Seacon (K) Ltd for a sum of 17,500.00. A copy of the sale agreement was attached and marked "EX" TSP 5". That the objector went ahead to sell and did sell and transferred sub -division Numbers 13570/1/MN and 13569/1/MN for a sum of kshs19, 500.00.

21. That failure by the objector /applicant to disclose that he has already benefited from the estate is a good ground to dismiss his application as he is not a honest person. Regarding his mother's senility allegations, he deponed that the old mother is in her normal senses and fully aware of the dealings or transactions she had undertaken in relation to her late husband's estate. He denied the allegation of intermeddling with the estate or manipulating their mother.

22. During the pendency of the application ,parties agreed to dispose the preliminary objection first challenging the application dated 30th September, 2019 which is the subject of these judgment. The preliminary objection dated 14th October 2019 was to the effect that the application was time barred same having been filed after the grant had been confirmed pursuant to Section 30 of the Law of Succession Act hence the claim for reasonable provision could not apply.

23. After canvassing the application, the court delivered its ruling on 9th October, 2020 thus allowing the preliminary objection. The court found that the prayer for reasonable provision was time barred hence could not apply. The court however directed for hearing to proceed with the rest of the prayers.

Viva voce evidence

24. Parties agreed to canvass the application by way of viva voce evidence. During the hearing, the applicant/objector adopted the averments contained in his affidavit which facts I have already summarized herein above. He also adopted the content of an affidavit sworn in support of the application dated 20th September, 2018 which was withdrawn.

25. He urged the court to revoke the grant of probate on grounds that his father did not provide for him in the will as one of the beneficiaries. He stated that his problems arose after he married a Christian woman leading to him being thrown out of the family house in Nyali.

26. It is his contention that he enjoyed a good relationship with the father before he died and that they celebrated his (objector's) birthday together on 26th July, 2008. He claimed that it was around the year 2018 that he spotted a will executed by his father which he claimed was not valid as it was not signed in each page by the testator.

27. The court was told that the 1st respondent is very old hence suffering from dementia and therefore incapable of discharging her duties as an executrix. That he has been denied access to the mother by the 2nd respondent who is staying with her in the family house.

28. The objector further claimed that he has since been discharged from the operation of Pandhaal furniture business. He produced a CD recorded showing how he had been denied access to visit the family house where the mother resides hence unable to see his mother.

29. He admitted however during his examination in chief that his mother had given him two plots after the grant had been confirmed and that his mother had given the 2nd respondent two plots as well. That the two plots given to each were equal. On cross examination, he admitted that his father had no shares in Pandhaal furniture business and that it was jointly owned by himself and the 2nd respondent his brother. On further cross examination, he stated that Central Furniture Company was owned by the 2nd respondent and his father in equal shares. He also stated that he came to know of these proceeding the year 2016.

30. On further cross examination, he admitted that the year 2013, his mother in her capacity as the executrix transferred 3 properties out of the estate to him. He also admitted selling the three properties he was given by the mother in her capacity as an executrix. He further confirmed that he was not doubting his father's signature in the will but rather his omission from the will yet he gave everything to his

mother. He confirmed on cross examination that he was given two plots and a go down while the 2nd respondent was also given two plots and a go down in town.

31. On his part, the 2nd respondent adopted his averments contained in the affidavit sworn on 18th November, 2018. He opposed the application stating that he and the objector were treated equally by their mother who was the sole heir to their father's estate.

32. He stated that Pandhaal furniture shop was not part of the estate. As to Central furniture, he claimed that it was jointly owned with the father. He further claimed that the Nyali house was transferred to him by his mother out of love and affection and that the objector has benefited out of the estate more than him.

33. Regarding the will, he stated that it was brought to their attention by their mother sometime 2008 during a wedding ceremony of one of their relatives and that the applicant was feigning ignorance of its existence. On cross examination, he told the court that Pandhaal business is no longer operational as it was closed.

34. Upon close of the hearing, parties agreed to file submissions. Consequently, the objector filed his submissions through the firm of Ngonze and Co. Advocates on 16th October, 2021 while the respondents filed theirs through the firm of Ms Wanjiku and Wanjiku Associates on 3rd November, 2021.

Objector's submissions.

35. In his submission, counsel for the applicant/ objector adopted the content contained in the affidavit and supplementary affidavit in support of the application. Mr Ngonze, submitted that the will was not valid hence a forgery as it was not counter signed by the deceased in every page contrary to his usual and known practice. Secondly, that the will did not make any provision for him. And thirdly, that at the time of making the will, the deceased was very sick hence did not understand what he was doing.

36. According to Mr Ngonze, the aforementioned allegations were not contradicted. Counsel made reference to several authorities in which courts invalidated wills executed when a testator was sick and therefore not capable of comprehending the content of the will. Among the cases quoted is In **Re -estate of Julius Mimano (deceased) (2019) e KLR** and In the **Re -estate of James Ngengi Muigai, Nairobi succession cause No 523/1996** where a will was invalidated as it was executed when the deceased was suffering from dementia.

37. Counsel opined that the person who attested the will did not testify to confirm that it was signed before him. That the two witnesses were also not called to testify.

38. Counsel went further to submit that the estate was not equitably nor equally distributed as the property was entirely bequeathed to the 1st respondent to the exclusion of other heirs or beneficiaries. That the manner in which the estate was distributed was discriminatory and in contravention of Articles 27, 25, 32 and 40 of the Constitution.

39. Learned counsel opined that under Section 21 of the Law of Succession Act, the applicant is an automatic dependant who is automatically entitled to a share of the estate of a deceased father. He submitted that the deceased's estate ought to have been shared equally. To buttress that position counsel relied on the holding in **Re -estate of John Musombayi Katumanga (deceased) (2014) e KLR.**

40. Concerning the question whether the applicant is entitled to reasonable share, Mr Ngonze submitted that the deceased left six survivors whose share should be 1/6 each. According to counsel, the objector being a son to the deceased is entitled to a share. Reference was made to the holding in the case of **Elizabeth Kamene Ndolo vs George Matata Ndolo NRB CA civil appeal No 128 /1995(1996) e KLR.**

41. Counsel submitted that a monthly sum of kshs300,000 will suffice and that transfer of L.R Mombasa /Block/ XXV/14 and 15 be cancelled so that the same reverts back to the deceased's name before equitable distribution.

42. Ms Wanjiku counsel for the respondent submitted on five issues;

- a. Whether the prayer for reasonable provision is properly before court;**
- b. Whether the grounds for revocation of the grant have been disclosed**
- c. Whether the evidence given discloses grounds under the law to invalidate the will**
- d. Whether the prayers sought should be granted**
- e. Who bears the costs**

43. It was counsel's submission that the prayer for reasonable provision is spent as the issues were determined by Justice Thande on 9th October, 2020 when she dismissed a preliminary objection challenging the same issue. That the same ruling has not been challenged nor appealed against.

44. As regards the issue of revocation, counsel opined that the grant having been confirmed and estate fully distributed, there is nothing to revoke. In support of this proposition Counsel relied on the holding in the case **of Charles Kibe Karanja (deceased) 2015) e KLR.**

45. According to Wanjiku, this court has no jurisdiction to re-open the proceedings as the grounds for revocation have not been established pursuant to Section 76 of the Law of Succession Act. That the ingredients for revocation of grant as stipulated in the law must be proved. Reliance in this regard was placed in the case of re-estate of **Njau Kanyora (deceased)(2016) e KLR** and in the **re-estate of Prisca Onga'yo Nande (deceased) (2020) e KLR**

46. Concerning validity of the will, Ms Wanjiku contended that the deceased was of sound mind when he signed the will and that his signature was acknowledged by the objector. That there is no requirement in law for signing in every page of the will. As to sickness of the deceased, counsel opined that he died out of heart attack which sickness the objector confirmed.

47. Learned counsel contended that the grant was confirmed way back in 2009 and in the 2013 the objector benefited from the said grant by acknowledging transfers of three properties into his name.

48. As regards the 1st respondent's mental incapacity to administer the estate, counsel submitted that there was no proof as the estate has been duly administered with the objector being a beneficiary and that currently, the executrix does not own any of the deceased's property. Counsel further submitted that from the video played in court, the mother appeared to be normal.

49. It was further opined that failure to provide for a beneficiary in a will does not invalidate a will. In support of this position, counsel placed reliance in the case of **Galzar Abdalla Wais V Yasmin Rashid Ganatra & another (2014) e KLR** where the court held that failure to provide for a beneficiary in a will does not invalidate a will.

50. Touching on the remedies sought, counsel submitted that they are not available as they are all spent. Regarding costs, counsel submitted that the suit was filed in bad faith hence the objector should meet the costs.

Analysis and Determination.

51. I have considered the application herein, response thereto and submission by both counsel. Issues for determination are ;

- a. Whether the will the subject of these proceedings was properly executed and therefore valid.**
- b. Whether the applicant/ Objector has established the grounds for revocation of the grant herein.**
- c. Whether the applicant /objector is entitled to reasonable provision**
- d. Whether the prayers/reliefs sought can be granted**
- e. Who is to bear costs**

Validity of the will.

52. It was the applicants/objector's contention that, the will presented before court was not properly executed and therefore invalid. Two reasons to express his dissatisfaction were laid out. Firstly, that the executor did not counter sign all the pages of the will as was his practice/custom. Secondly, that his name was omitted from the list of beneficiaries.

53. What constitutes a valid will in law? Sections 5 of the law of succession provides that;

- i. Subject to the provisions of this part and part III, every person who is of sound mind and not a minor may dispose of all or any part of his free property by will, and may thereby make any disposition by reference to any secular or religious law that he chooses;
- ii. ...
- iii. Any person making or purporting to make a will shall be deemed to be of sound mind for the purpose of this section unless he is at the time of executing the will in such a state of mind, whether arising from mental or physical illness, drunkenness, or from any other cause as to know what he is doing.
- iv. The burden of proof that an executor was at the time he made any will not of sound mind, shall be upon the person who alleges.

54. In this case, the will is being challenged for not providing for the objector. It is true that other than the widow, none of the children was provided for save for the addition that the 2nd respondent was to step into the shoes of their mother in the event she and the deceased died at the same time.

55. It is trite that, failure to provide for or list a perceived beneficiary or an heir or dependant to the estate is not a ground to invalidate a will. See in the estate of **Philip Nthenge Mukonyo (deceased) (2018) e KLR and Gulzar Abdul Wais Vs Yasmin Rashid Ganatra & another (Supra)** where the court held that;

"I am guided by the cited case. The legal position is clear that failure to provide for beneficiaries in a will does not, invalidate a will. This is because the court is empowered under Section 28 of the Law of Succession to make reasonable provision for the dependant in exercise of its discretion".

56. Guided by the above case law, it is apparent that a will cannot be invalidated by a mere omission or exclusion of a beneficiary or dependant.

57. On the second limb of the objection, Section 11 of the Law of Succession provides that, a will shall not be valid unless-

a. The testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator

b. The signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

c. The will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time and no particular form of the attestation shall be necessary”.

58. In the instant case, the objector did acknowledge that the signature on the impugned will was that of his father but doubted the same because not all pages were counter signed. The law is very clear on the critical elements constituting a valid will. Signing of a will in all pages is not a legal requirement nor precondition. To demand that each page be counter signed is a personal opinion which cannot stand the test of law. That ground is therefore not available.

59. The other reason why the validity of the will was put into question is the mental status of the deceased. According to the objector, the deceased was sickly and therefore not capable of executing the will. However, there was no proof by way of medical evidence that the deceased was suffering from mental illness that incapacitated his mental faculties thus rendering him incapable of understanding the content and effect of what he was signing. Section 11 (4) of the Law of Succession Act places the burden of proof on whoever alleges that a will is not validly executed by a deceased person while in his sound mind. See in the estate of **Gathitu Njuguna (deceased) (1998) e KLR** where the court held that;

“as regards the testator’s mental and physical capacity to make the will the law provides that the testator was of sound mind and the burden of proof that the testator was of sound mind is upon the person alleging lack of sound mind, in this case the applicant (Section 5 (3) and 5 (4) of the Law of Succession”

60. Besides, the objector did not adduce evidence to prove the nature of illness that incapacitated the deceased. In any event, it was the objector’s evidence that his father suffered a heart attack and that he was the one who rushed him to hospital. From this kind of evidence, it was the heart attack that led to the sudden death of the deceased which is not associated with any pre-existing condition hence the mental soundness of the deceased prior to his death should not be in issue.

61. In a nutshell, I have no doubt that: the will was signed by the deceased which is not in dispute: it was witnessed by two witnesses and that, the deceased was mentally and physically fit when executing it.

Whether the grounds for revocation of a grant have been established.

62. The objector sought for revocation of the grant on the grounds that the will used was forged and that he was not made aware of the proceedings. In his pleadings, he stated that he came to learn of the proceedings the year 2018 and on his cross examination he changed to 2016.

63. Having found that the will was properly executed, I am left with the ground of lack of knowledge. Grounds for revocation of a grant are clearly set out under Section 76 of the Law of Succession which provides that;

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 proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulent 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 has ordered 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

64. It was incumbent upon the applicant to prove any of the grounds set out above for the court to revoke the grant. In the case of **In the Re estate of Prisca Onga'yo Nande (deceased)**(supra) the court emphasized on proof of any of the grounds stipulated under Section 76. See **Jesse Karaya Gatimu Vs Mary Wanjiku Githinji (2014) e KLR and Matheka and another V Matheka (2005) KLR 455**

65. The applicant /objector is only claiming that he was not involved in the proceedings by extension non-disclosure to the court that there were other beneficiaries. There is no dispute that there are five children in the family. Three out of five are daughters who are not claiming any share. The only person complaining is the objector for not being provided for or involved in the proceedings.

66. When did the objector come to discover these proceedings? At first, he claimed that he discovered the year 2018 when he saw a Kenya gazette notice. Later on cross examination, he said he came to learn of the will 2016. However, the 2nd respondent stated that the entire family was informed of the existence of the will the year 2008 while attending a relative's wedding ceremony.

67. Curiously, the objector acknowledges transfer of three properties to him by the mother out of the estate in the year 2013 with the mother as the transferor in her capacity as the executrix. The objector further admitted on cross examination that he and his brother (respondent) were given two plots which were equal. He further admitted that he has since sold all the properties given to him and he has nothing remaining.

68. The question is, how can one challenge the propriety or legality of these proceedings yet he has already benefited from the same? Why didn't he question the process the year 2013 and reject transfer of any title illegally acquired to him.

69. By accepting transfer of property acquired through the process he is deemed to have acquiesced to the process. He is deemed to have validated the process hence recognized it as valid. Why would he ask for a share of his brother's share yet he has sold the whole of his share?

70. Is the objector asking the court to declare his own sale agreements to people he sold his properties to out of the estate as null and void and therefore cancelled? I do not think the objector is being sincere in his claim for revocation. This is an afterthought having realised that he has squandered his share. The estate has been administered by the sole executrix to completion and the executrix has no single property in her name.

71. It is 12 years since the grant was confirmed and estate duly distributed with the objector as a beneficiary. It is my finding that the grounds for revocation have not been proved to the required standard.

72. The allegation that the 2nd respondent manipulated his mentally unsound mother suffering from dementia is not correct. From his video clips played in court, it was manifestly clear that the mother is aged but of clear sound mind. She engaged the objector in several conversations asking the objector where his family was, where he was staying and such long stories. Save for the difficulties in hearing unless spoken to loudly, she appeared to me to be quite sound. After all, how could she be suffering from dementia yet be capable of executing transfer documents of property to him? Courts should not condone attempts to keep succession files floating in court for ever hence litigation must come to an end. See Patrick **Gathenya Vs Esther Njoki Rurigi and another (2008) e KLR.**

73. As to whether the prayers sought for the objector to be getting some monthly payment out of rent collected from the 2nd respondent's property, it is common knowledge that the property known as Mombasa /Block XXV/14 and 15 are no longer part of the estate as they were registered in the name of the 2nd applicant after their mother transferred the same to him. If the objector has disposed all his share he cannot partake on his brother's share. Supposing the brother had also sold his like he did, what would he be claiming? I do not find these reliefs tangible to be awarded.

74. The other issue raised is that of reasonable provision. This prayer was canvassed through a Preliminary Objection and a ruling delivered by Thande J on 9th October, 2020. There is no application for review nor an appeal. That ground therefore cannot be raised again before me being a court of concurrent jurisdiction. Accordingly, I cannot decide on the same issue as it has been determined on merit hence res - judicate.

75. Besides, what other reasonable provision does he want if he has already been given an equal amount with his brother? Concerning costs, I do take into account that this is a family matter hence each party shall bear own costs.

76. Accordingly, the summons herein dated 30th September, 2019 is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 15TH DAY OF FEBRUARY, 2022.

J. N. ONYIEGO

JUDGE