



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
FAMILY DIVISION
SUCCESSION CAUSE NO. 214 OF 1998
IN THE MATTER OF THE ESTATE OF SADHU SINGH
NIHAL SINGH SHAM SINGH BAMRAH (DECEASED)

HARJIT KAUR BAMRAH.....APPLICANT

VERSUS

THE ESTATE OF TARLOK SINGH BAMRAH (DECEASED).....1ST RESPONDENT

JASWINDER SINGH BAMRAH.....2ND RESPONDENT

DALJEET KAUR MUDHAR.....3RD RESPONDENT

SATPAL SINGH AMRAH.....4TH RESPONDENT

GURPRIT SINGH BAMRAH.....5TH RESPONDENT

RULING

1. The deceased Sadhu Singh Nihal Singh Sham Singh Bamrah s/o Nihal Singh Bamrah alias Sadhu Singh Bamrah alias Sadhu Singh died on 17th October 1997 in Nairobi. He was survived by his widow Swaran Kaur Bamrah (who died on 18th June 1999) and two sons, Harbans Singh Bamrah who died on 3rd February 1991 and Tarlok Singh Bamrah who died on 3rd June 2017. His estate comprised:-

- (a) Mavoko LR No. 12715/613;
- (b) Mavoko LR No. 12715/217;
- (c) Nairobi Industrial Area LR No. 209/6990; and
- (d) Nairobi West No. 37/241/7.

2. On 5th February 1998 Swaran Kaur Bamrah and Tarlok Singh Bamrah petitioned this court for the grant of probate, the deceased having left a written Will made on 12th June 1997 at Nairobi. It is noted that the Will provided that the deceased's estate should go to the two in equal shares. The grant was issued on 8th April 1998, and confirmed on 23rd April 1999. The estate devolved in accordance with the Will. The grant was amended on 4th June 2003.

3. The applicant Harjit Kaur Bamrah is the widow of the deceased's son Harbans Singh Bamrah. She lives in the United States of America.

4. Jaswinder Singh Bamrah (2nd respondent), Daljeet Kaur Mudhar (3rd respondent), Satral Singh Bamrah (4th respondent) and Gurprit

Singh Bamrah (5th respondent) are the children of Tarlok Singh Bamrah. Before Tarlok Singh Bamrah died, he had transferred LR No. 209/6990 and LR No. 37/241/7 to the children.

5. The present application is dated 21st May 2020. It was brought by the applicant (the deceased's daughters-in-law) who sought the following orders:-

“5). the deceased's will dated 12th June 1997 be declared null and void;

6). the applicant receives her beneficial share of all rental income accruing from the deceased's estate including the income from the properties known as LR Nos. 37/241/7 and 209/6990 from 17th October 1997 to date;

7). the transfer of the property known as L.R No. 37/241/7 to the 2nd to 5th respondents who are the current proprietors of the property be declared null and void/ cancelled and instead be transferred to the legitimate estate beneficiaries including the applicant in equal shares as Tenants in Common;

8). the transfer of the property known as LR. No 209/6990 to the 2nd, 3rd and 5th respondents who are the current proprietors of the property be hereby declared null and void/ cancelled and be transferred to all the legitimate estate beneficiaries including the applicant in equal shares as Tenants in Common;

9). in the alternative to prayer 7 herein above, the register at the Lands Registry concerning the properties known as L.R No. 37/241/7, 209/6990 and any other properties within the deceased's estate be rectified to include the applicant as one of the proprietors of the properties in equal share with the other proprietors as Tenants in Common;

10). in the alternative to prayer 8 herein above, all the register at the Lands Registry concerning the property known as LR No. 209.6990 and any other properties within the Deceased's Estate be hereby rectified to include the applicant as one of the proprietors of the properties in equal shares with the other proprietors as Tenants in Common.

11). the grant of probate issued to the 1st respondent on 8th April 1998 be hereby annulled;

11). the Public Trustee hereby takes over the administration and distribution of the deceased's estate; and

12). costs of the application.”

6. The applicant swore that she was not only the deceased's daughter-in-law but was also his beneficiary. Her complaint was that she was not involved in the proceedings leading to the grant of probate, and the confirmation of the grant, and had consequently been disinherited. Secondly, that the deceased did not leave any written Will; that the purported Will was a forgery, null and void, and incapable of passing any part of the estate. In paragraph 8 of the supporting affidavit dated 21st May 2020, the applicant deponed as follows:-

“(8) However, it is manifestly clear that the purported Will is fraud on the following grounds:-

(a) it is not drafted by a law firm but appears to have been drafted by somebody on his behalf. It is therefore suspicious that the deceased signed the will in Punjab while the rest of his Will is drafted in English as he was not well versed in the English language;

(b) The deceased passed away around four (4) months after he purportedly executed the Will meaning that he was in a frail and vulnerable condition at the material time the Will was purportedly of the family;

(c) it fails to provide for me as the widow of my husband despite my late husband being a much loved and integral member of the family;

(e) I was never informed of the existence of these proceedings despite various enquiries with Tarlock Singh Bamrah who indicated that the Deceased had left no Will which he claimed had led to delays in the commencement of succession proceedings;

(f) Tarlock Singh Bamrah misrepresented the facts of the matter and misled me into signing certain documents whose contents were unknown to me on the assurance that I would be adequately provided for from the Estate as the widow of one of the deceased's sons. That was the last time I heard from him as he did not respond to my further enquiries despite being based in the United States of America since 1993;

(g) in 2012, Tarlok Singh Bamrah conspired with and wrongfully transferred LR No. 209/6990 to his children the 2nd, 3rd, and 5th respondents for Kshs.20 million; and

(h) in 2014, to my further exclusion, Tarlock Singh Bamrah conspired with and wrongfully “gifted” LR No. 37/241/7 to his children being Jawsinder Singh Bamrah who had previously witnessed the deceased's impugned Will, Daljeet Kaur Mudhar, Satpal Singh Bamrah and Gurput Singh Bamrah as Tenants in Common who are the current proprietors of the property.”

7. The applicant swore that following the death of the deceased she was in communication with Tarlock Singh Bamrah who indicated to her that the deceased had not left a Will. He got her to sign certain documents whose contents she did not know. She came to learn that in 2012 Tarlok Singh Bamrah had wrongfully transferred LR No. 209/6990 to his children (the 2nd, 3rd and 5th respondents) for Kshs.20,000,000/=. He had further transferred LR No. 37/241/7 to his children (the 2nd to 5th respondents). She stated that the 2nd respondent had witnessed the purported Will. Upon the death of the deceased's widow, she stated, Tarlock Singh Bamrah had become the sole administrator of the estate, and that upon his death the grant had become useless and inoperative.

8. The respondents filed a notice of preliminary objection dated 4th August 2020. The grounds were that the court lacked jurisdiction to hear and determine the dispute as the applicant is seeking to be provided reasonable provision from the estate, and yet **section 30 of the Law of Succession Act (Cap 160)** bars such provision when the grant has been confirmed. The other ground was that the applicant, being daughter-in-law of the deceased, was neither a beneficiary nor deponent of the deceased's estate.

9. The 2nd respondent defended the deceased's Will. He stated that the deceased was always of sound mind and signed his documents in English while his widow signed his documents in Punjabi. His case was that the applicant was present when the Will was read following the deceased's death. He deponed that according to the certificate of confirmation issued in **High Court at Nairobi Succession Cause No. 1970 of 1995**, in respect of the Estate of Harbans Singh Bamrah, the applicant's husband, the applicant was entitled to one third share in the deceased's LR No. 12715/613 and one third share in the deceased's LR no. 12715/217. The 2nd respondent is an advocate. The applicant granted him a special power of attorney created on 30th April 1996 with instructions to transfer her share in LR no. 12715/613 and LR No. 12715/217 equally to Tarlok Singh Bamrah and Sadhu Singh Bamrah, which he did. The transfers were registered. The 2nd respondent therefore challenged the applicant's contention that she did not know about the Will, or that she was not provided in the estate of the deceased. The respondent placed before the court the certificate of confirmation in respect of the estate of the applicant's husband, and the special power of attorney created by the applicant. No further affidavit was sworn to challenge the averments.

10. The 4th respondent deponed that following the death of the applicant's husband on 3rd February 1991, she was given £135,000 pounds from the deceased's estate. She then got a grant in respect of her husband's estate. When it was confirmed she sold his entitlement to Sadhu Singh Bamrah and Tarlock Singh Bamrah who paid her in English pounds. Further the applicant was given a house at 4 College Park, Peterborough PE1 4AW in the U.K. which Tarlok Singh Bamrah paid for. The 2nd respondent exhibited these transactions. Again, no further evidence was tendered to challenge them. The 5th respondent supported the averments by the 2nd respondent.

11. Dr. Pankaj Jani filed his affidavit dated 17th July 2020 to state that he was the deceased's surgeon since 1996. He confirmed that the deceased was of sound mind at the time in question.

12. Kunumpurath Ebrahim Aliyar averred that he was a tenant of the deceased and his widow. They lived in the same building with their children. He stated that although the deceased had cancer, he was sharp-minded and aware of his surrounding up to the time of his death.

13. The 4th respondent stated that the applicant always lived in the United States and was not close to the deceased, she only came to bury him after he had died. She was present when the Will was read. In regard to the affidavits of the applicant's daughter Surinder Kaur Chudha who supported the application, he stated that the deceased and his widow provided substantial estate both to their daughter and the applicant.

14. The applicant sought the revocation of the grant of probate because it was fraudulently obtained; that the deceased did not leave a valid written Will, the written Will dated 12th June 1997 being null and void; and that the said Will was invalid because it did not provide for her.

15. Beginning with the last ground, it is now trite that failure to make provision for a dependant by a deceased person in his Will does not invalidate the Will as the court is empowered under **section 26 of the Act** to make reasonable provision for the dependant (**James Maina Anyanga –v- Lorna Yimbiha Ottaro & 4 Others [2014]eKLR**).

16. Secondly, the grant of probate was issued on 8th April 1998, confirmed on 23rd April 1999 and amended on 4th June 2003. The present application was brought on 21st May 2020. It took over 20 years following the confirmation of the grant, for the applicant to apply for revocation. I am aware that under **section 47 of the Act** and **rule 73 of the Probate and Administration Rules**, the court is empowered to issue any orders to enable the ends of justice to be met or to prevent abuse of the process of the court. However, without any explanation on the part of the applicant why she could not bring the application earlier, this court cannot exercise its discretion to assist her. This is because she overslept on her rights, and the law will not assist the indolent (**Julius Kamau Kithaka –v- Waruguru Kithaka Nyaga & Another [2013]eKLR**). It was also demonstrated by the respondents that the applicant benefitted from the estate of the deceased.

17. Thirdly, **section 30 of the Act** provides that:-

“No application under this Part shall be brought after a grant of representation in respect of the estate to which the application refers has been confirmed as provided by section 71.”

It is clear in this case that the applicant is seeking provision to her as a dependant long after the grant of probate was confirmed. The court has no jurisdiction to hear or grant her prayer.

18. Has it been shown that the deceased's Will was invalid? Is it true that the deceased had no capacity to make a written Will? The respondent swore that the deceased, although sick, had the mental capacity to make a Will. They called the affidavit of his surgeon and the affidavit of his tenant who lived in the same building with the deceased to testify to this state of mind. The applicant stated that the Will was not drafted by a law firm but by somebody on his behalf; that the deceased signed his Will in Punjabi while the rest of the Will was drafted in English, a language he was not versed in. Lastly, that the deceased died four months after the Will was executed, meaning he was in a vulnerable condition at the time of the Will.

19. Kunnumpurath Saydu Mohamed Abdul Karim swore an affidavit dated 20th November 2020 to state that he had known the deceased and his family for many years. He recalled that when the deceased wanted to make the Will he (the deceased) called the advocate Mr Vishnu Sharma (now deceased) who prepared the document in English. The advocate and the deponent explained the contents of the Will to the deceased in Punjab. When the deceased confirmed that the Will accorded with his wishes he signed it. The advocate and the deponent witnessed the Will. The evidence was not challenged. The applicant did not state that he was anywhere near the deceased at the time in question to be able to know his physical or mental state. She did not challenge the signature of the deceased on the Will. She did not challenge the evidence that the contents of the Will contained the deceased's wishes. She did not adduce any evidence to show that the deceased was coerced into making the Will.

20. **Section 6** of the **Act** provides that:-

“(1) 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 of his free property by will, and may thereby make any disposition by reference to any secular or religious law that he chooses.

(2) A female person, whether married or unmarried, has the same capacity to make a will as does a male person.

(3) 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 not to know what he is doing.

(4) The burden of proof that a testator was, at the time he made any will, not of sound mind, shall be upon the person who so alleges.”

21. It is not in dispute that the deceased was an old man and had cancer, but no evidence was placed before the court to demonstrate this age or illness had affected his mental capacity. In **Re Estate of Lucy Muraguri [2015]eKLR** the court observed that:-

“Old age of itself is no ground for invalidating a Will. A person can be aged 90 years but will be as fit as a fiddle and in full control of his faculties. Likewise, being sickly is not evidence that a person does not have mental capacity. What matters is whether the old age and sickness had an effect on the testator's mental capabilities.”

22. The burden was on the applicant to prove that the deceased was at the time of making the Will not of sound mind. I find that she did not discharge that burden.

23. It is clear from the forgoing that the applicant was present when, following the deceased's death, the Will was read to the family. She therefore had the earliest opportunity to challenge it. She did not. Further, it is evident that she benefitted from the deceased through her late husband. She cannot therefore be allowed to seek further provision.

24. In conclusion, the applicant's application is dismissed with costs. The respondents' objection is sustained with costs.

DATED and DELIVERED at NAIROBI this 8TH FEBRUARY 2021.

A.O. MUCHELULE

JUDGE