



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 769 OF 1988

IN THE MATTER OF THE ESTATE OF DES RAJ GANDHI (DECEASED)

RAJ KUMARI GANDHI.....APPLICANT

VERSUS

TRILOK NATH GANDHI.....RESPONDENT/ADMINISTRATOR

RULING

1. By way of Summons for Revocation of Grant, dated 7th December, 2017 the Applicant seeks revocation of the Grant of Letters of Administration issued in respect of the Estate of Des Raj Gandhi (deceased) granted to Trilok Nath Gandhi and Joginder Kumar Gandhi on 10th October, 1988 and confirmed on 15th November, 1988. The applicant seeks the following orders:

- i. That an injunction do issue restraining the alienation, advertising, offering for sale, selling, transferring, mortgaging, and/or dealing in any way whatsoever with the property known as L.R No. 209/1874 Nairobi by Trilok Nath Gandhi by himself, his agents and employees or any other person without the express order of this Court.
- ii. That the grant of letters of Administration de bonis non made to Trilok Nath Gandhi and Joginder Kumar Gandhi be revoked and instead be issued to herself.
- iii. That Trilok Nath Gandhi be directed to file a full and accurate inventory of the assets and liabilities of the deceased's estate and dealings to date from the period the grant was issued to date.
- iv. Costs of the application.

2. The summons is supported by an affidavit dated 7th December, 2017 sworn by the Applicant. It is her disposition that the deceased died on 18th January, 1958 and the administration of the estate was granted to the respondent. She claims that 29 years have passed since the confirmation of the grant but the Respondent/Administrator has failed to provide a full and accurate inventory of all assets and liabilities of the deceased's estate and the dealings thereto since his appointment as an administrator. She further contends that the Respondent has disinherited the beneficiaries of the deceased's estate without justifiable cause denying them their rightful share. She lists the beneficiaries of the estate of the deceased as follows:

- i. Trilok Nath Gandhi – living son
- ii. Raj Kumari Gandhi wife to Setpal Gandhi - son (deceased)
- iii. Brij Gandhi wife to Krishan Baldev Gandhi - son (deceased)
- iv. Pramila Gandhi wife to Jagdish Gandhi – son (deceased)
- v. Kiran Gandhi wife to Joginder Gandhi – son (deceased)

3. The applicant asserts that the Administrator has defrauded the beneficiaries of the estate property comprising of L.R No. 209/1874 which he has fraudulently transferred to himself. Further, that he has since demolished structures on the said property and is in the process of disposing the property. She avers that the administrator is unfit to hold that office due to his inability to diligently administer the estate of the deceased.

4. In response to the summons, Trilok Nath Gandhi by way of a replying affidavit dated 25th January, 2018 and two further affidavits dated

24th July, 2018 and 24th October, 2018 respectively avers that he is the surviving administrator of the Estate of the deceased after the death of his brother Joginder Kumar Gandhi a co-administrator to the estate of the deceased. He contends that due to difficulties facing the family, there was an agreement among the beneficiaries of the estate, reached in 1994 for the sale of the suit property. That, despite this decision and without the consent of the family, the Applicant placed a caveat on the property. He contends that this caused delay in the distribution of the estate to the beneficiaries while increasing the management costs of the estate.

5. The administrator further contends that the applicant later on attempted to extend the term of the caveat in court but her application was unsuccessful. He asserts that when the caveat expired he went ahead and registered the death of his co-administrator with the Registrar of Lands before the Deed of Assent was registered. He further states that he subsequently sold the property as agreed by the beneficiaries in 1994 which property had already been distributed to himself and his brother the Co-administrator Joginder Kumar Gandhi (deceased) on 15th November 1988 upon confirmation of the grant.

6. The administrator asserts that he was within his right to sell the property since he was holding the same as an owner not a trustee as alleged by the applicant. He contends that pursuant to the sale he appointed the firm of M/s Kimani & Associates Certified Public Accountants who prepared a detailed financial report and ascertained that he had incurred investment/expenses owed by the estate amounting to Kshs. 125,164,379/=. As a result, he set – off the amount from the purchase price of Kshs. 140 million and deposited the balance in court as directed. Further, that he sold the property to recover the expenses he had incurred running the estate of the deceased. He asserts that he is willing to have the estate distributed to all the 12 beneficiaries of the estate after deducting the expenses he has incurred toward the estate.

7. It is his disposition that the applicant is not qualified to be granted letters of administration because she has not obtained the consent of the three surviving sisters of the deceased namely Manohar Gulati, Saroj Wason and Champa Khanna. Further that the issue of providing accounts arose in 1995 and the matter was concluded when he furnished full and detailed accounts of the estate in a dispute before the High Court. He adds that the applicant has filed this application 29 years after distribution mainly because of financial difficulties she has encountered and he is apprehensive that it has not been done in the best interest of the estate. He asserts that he has undertaken the administration of the estate effectively despite challenges mainly caused by the Applicant.

8. In a further affidavit dated 6th April, 2018 the applicant refutes claims that the property has already been sold as alleged contending that the same has only been transferred to the respondent. Further, that if any purported sale has taken place, then it has been undertaken without the consent of the beneficiaries of the estate and the proceeds of the alleged sale have not been distributed amongst the beneficiaries of the estate of the deceased.

9. The applicant contends that the caveat she placed on the property was irregularly removed by the Administrator to enable him solely benefit from the property. Further, that the administrator has refused and/or neglected to provide full and accurate accounts of his dealings in the estate since he took over its administration. She asserts that the Respondent is unfit to hold the office of Administrator of the estate due to the failure to diligently administer the estate. The fraudulent transfer of the property into his own name and its purported sale thereafter for his sole benefit and are just some breaches of trust he has perpetrated.

10. Saroj Wason, Manohar Luta Gulati, Champa Khanna all daughters of the deceased filed further affidavits dated 26th July 2018, whose sentiments were echoed in further affidavits of Pramila Gandhi, Brij Gandhi and Arun Gandhi widows of the deceased's sons dated 3rd September, 2018, 21st July, 2018, and 3rd September 2018 respectively. They averred that the deceased was survived by the following beneficiaries:

- i. Trilok Nath Gandhi – living son
- ii. Raj Kumari Gandhi wife to Set pal Gandhi - son (deceased)
- iii. Brij Gandhi wife to Krishan Baldev Gandhi - son (deceased)
- iv. Pramila Gandhi wife to Jagdish Gandhi – son (deceased)
- v. Kiran Gandhi wife to Joginder Kumar Gandhi – son (deceased)
- vi. Arun Gandhi – grandson of the deceased son Prem Prakash Gandhi
- vii. Manohar Luta Gulati – daughter
- viii. Champa Khanna – daughter
- ix. Saroj Wason - daughter

11. They contend that the administrator having been aware that his administration had been challenged, he illegally sold the suit property without their consent to Adizone Limited for Kshs. 145 million. They assert that despite the sale, they were yet to receive their share of the proceeds amounting to Kshs. 16,111,111.11/= each being an equal division among the 9 beneficiaries of the estate. They prayed that their respective shares of the sale proceeds be deposited with their Advocates on record.

12. Manohar Luta Gulati in another affidavit dated 3rd July 2020 sworn in support of the summons for revocation of grant states that the administrator illegally sold the property for 140 million and denies claims that Kshs. 125,164,379/= was owed to him by the estate which he offset and deposited the balance of Kshs. 14,835, 621/= in court. She asserts that the amount is not justified nor backed by any evidence. She

urges the Court to scrutinize the audit report filed which is full of inflated costs and order an independent audit to ascertain the true value of the estate excluding liabilities. She also prays for the appointment of Raj Kumar Gandhi and herself as co-administrators or alternatively an independent administrator be appointed by the Court.

13. The court gave directions for the matter to proceed by way of written submissions. The applicant and Manohar Luta Gulati filed written submissions in support of their case. They submitted that the respondent deliberately made false statements and concealed material facts on the surviving beneficiaries of the estate of the deceased prior to the confirmation of grant. Secondly, that the respondent had failed to diligently administer the estate as enumerated in **Section 83** of the Law of Succession Act, by failing to distribute rental income to beneficiaries, to uphold his fiduciary duty, to hold the estate property in trust for beneficiaries and the illegal selling of estate property. It was further submitted that the administrator had acted fraudulently and perjured himself thus the summons for revocation of grant should be allowed as prayed. No submissions were filed by the administrator despite directions from the Court to comply.

14. I have read and carefully considered the pleadings and submissions made by the parties herein. The issue for consideration is whether the application before me passes muster on the threshold set by **Section 76** of the Law of Succession Act. In this case, the applicant sought for revocation of grant.

15. The Court has power to revoke a grant in the circumstances set out in **Section 76** of the Law of Succession Act, as follows:

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.”

16. It is clear that the application is laid under **Section 76** of the Law of Succession Act which has already been set out above. The points for and against the application are also set out above. The ingredients required to be established before the relief is earned are inbuilt in the same Section 76 of the Act. The main grounds fronted by the Applicant are that the Administrator has illegally transferred estate property to himself without the consent of the beneficiaries. Further, that the administrator made false statements and concealed material facts on who the surviving beneficiaries of the estate of the deceased were prior to the confirmation of grant. It was also contended that the administrator has refused and/or neglected to distribute rental income to beneficiaries and provide full and accurate accounts of his dealings in the estate ever since he took up its administration.

17. Raj Kumari Gandhi, Saroj Wason, Manohar Luta Gulati, Champa Khanna, Pramila Gandhi, Brij Gandhi and Arun Gandhi all beneficiaries of the estate of the deceased claimed that the property was sold in 2018 without their consent but they were yet to receive their share of the proceeds of the sale. This was not disputed by the Administrator, who however claimed that the sale was pursuant to an agreement by the beneficiaries a claim which was vehemently disputed by seven of the nine beneficiaries of the estate of the deceased.

18. When the matter came for hearing pursuant to the filing of the summons and affidavits in support and in opposition thereto, there was a unanimity in the averment that the property had already been sold. On 1st October, 2018 Muigai J directed that the proceeds of sale of the property known as L.R No. 209/1874 be deposited in Court. The administrator claimed that he sold the property for Kshs. 140 million and he had incurred expenses in the administration of the estate amounting to Kshs. 125,164,379/=. As a result, he set – off the amount from the purchase price of Kshs. 140 million and deposited the balance in court. Brij Gandhi claimed that the property was sold for Kshs. 145 million. From the record it is not clear how much the property was sold for as there is no instrument of sale being a sale agreement adduced by the Administrator.

19. In the summons for revocation of grant the Applicant has claimed that the administrator deliberately made false statements and concealed material facts on the surviving beneficiaries of the estate of the deceased. On the other hand, the administrator contends that the decision to omit some of the beneficiaries of the estate was made by the family and that there was an agreement that he and his brother Joginder Kumar Gandhi (now deceased) should take up administration of the estate of the deceased. From the record, the Affidavit in support of the Petition for Grant of letters of administration dated 15th April 1988 sworn by Trilok Nath Gandthi and Joginder Kumar Gandhi indicates that the deceased was survived by the following:

- i. Sat Pal Gadhi (now deceased) – son
- ii. Trilok Nath Gadhi – son
- iii. Joginder Kumar Gandhi (now deceased) - son
- iv. Ramesh Chandra Gandhi (unsound mind)

20. After a careful consideration of the evidence in the Petition, various applications in the cause, and the affidavits filed by the parties herein, the unrefuted facts are that the deceased died on 18th January, 1958 leaving behind a widow Lila Wati Gandhi, 8 sons and 4 daughter. Of these, only one son and three daughters are currently living. However, five of the seven deceased sons left widows who have a beneficial interest in the estate of their father-in-law. No information was availed as to the whereabouts of the other children of the deceased only that Ramesh Chandra Gandhi was not considered due to being of unsound mind. All in all the beneficiaries of the estate of the deceased are therefore as follows:

- i. Trilok Nath Gandhi – living son
- ii. Raj Kumari Gandhi wife to Set pal Gandhi - son (deceased)
- iii. Brij Gandhi wife to Krishan Baldev Gandhi - son (deceased)
- iv. Pramila Gandhi wife to Jagdish Gandhi – son (deceased)
- v. Kiran Gandhi wife to Joginder Kumar Gandhi – son (deceased)
- vi. Arun Gandhi – son of the deceased’s first son Prem Prakash Gandhi
- vii. Manohar Lata Gulati – daughter
- viii. Champa Khanna – daughter
- ix. Saroj Wason - daughter
- x. Ramesh Chandra Gandhi – son

21. From the detailed chronology of the documents that the Petitioners lodged for grant of letters of administration intestate, they did not disclose all the survivors of the deceased. No consent from the survivors were ever filed to confirm the allegations that they agreed to be excluded from the Petition as stated by the administrator. The non-disclosure of all beneficiaries of the deceased's estate amounted to concealment of material facts. The grant of 10th October, 1988 and confirmed on 15th November, 1988 was therefore fraudulently obtained by means of an untrue allegation of a fact essential in point of law to justify the grant.

22. This elicited the subsequent dispute by the Applicant and the administrator over suit property. The applicant placed a caution on the property and for all intents and purposes the administrator/respondent attempted to have the caution vacated. Upon its expiry, the applicant was unsuccessful in having the same extended which culminated in its removal and subsequent transfer of the property from the deceased to the surviving administrator who sold in 2018.

23. There have been arguments and counter arguments on whether the sale of the property was done with the consent of the beneficiaries and how much they should each receive as their share in the estate of the deceased. The administrator conceded that there was a sale but the sale was agreed upon by the beneficiaries. He asserted that the sold the property to recover to expenses he had personally incurred in his administration of the estate. He averred that he has since rendered accounts elaborating how the expenses were incurred accruing upto Kshs. 125 million and how the proceeds of the sale were applied.

24. The administrator has not indicated how and from who he obtained the consent to sell estate property, and there is no evidence that there was an order of Court allowing him to sell. The beneficiaries on record have all indicated that they did not consent to the sale of the property. The administrator himself conceded that he sold the property to recover expenses he personally incurred in the administration of the estate. In any case it was irresponsible for the Administrator to manage an estate worth Kshs. 140 million at a cost of Ksh. 125 million. The sale of the property without the consent of the beneficiaries or order of the Court was therefore illegal.

25. On the issue of accounts, there was a document dated 19th October, 2018 referred to as ‘Assessment of the Late Desraj Gandhi Estate’ prepared by Kimani and Associates Certified Public Accountants for the Administrator. A perusal of the document indicates that it is an assessment of the money spent by the administrator in administration of the estate. The sum total spent by the administrator as indicated is Kshs. 125,164,379/=. The Applicant also filed a report prepared by the firm of KKCO East Africa which concluded that the Administrator’s report related to his personal expenses not attributed to the estate and failed to comply with existing accounting principles. Further, that there is no estate account as required by law and that the true value of the deceased’s estate is Kshs. 147, 690,000 comprising of Kshs. 140 million in sale proceeds and 7,690,000/= in rental income generated from the suit property from the time he took up administration of the estate.

26. The relationship between personal representatives of a deceased and his heirs is a fiduciary one. The administrator herein is in a fiduciary relationship with the beneficiaries of the deceased. **Section 83** of the Law of Succession Act on the duties of personal

representatives provides as follows:

“83. Duties of personal representatives

Personal representatives shall have the following duties—

- (a) to provide and pay out of the estate of the deceased, the expenses of a reasonable funeral for him;**
- (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;**
- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);**
- (d) to ascertain and pay, out of the estate of the deceased, all his debts;**
- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;**
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;**
- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration;**
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;**
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.”**

27. As a noun, the word “account” is defined in Black’s Law Dictionary 10th Ed. as relevant in the following terms:

“A detailed statement of debits and credits between parties to a contract or to a fiduciary relationship.”

28. A duty to account arises both in Equity and under the Law of Succession. At the time the Administrator herein was appointed, the only asset available for distribution was the property known as L.R No. 209/1874. This being the entire estate, it was the duty of the administrator to present to the Court a comprehensive list of all the beneficiaries and ensure that each beneficiary receives a share of this property or in the alternative, if they consent to the sale, all beneficiaries receive an equal share in sale proceeds, unless a beneficiary voluntarily rescinded their share.

29. From the foregoing, the duty to account for the assets, liabilities and dealings of any estate purely lies on the personal representatives. There is no short cut about it. It is a statutory obligation to which the administrator of an estate must adhere to without any amount of discretion. As at the time of the disposal of this Ruling, the said administrator has not demonstrated to the satisfaction of the court that the estate had been distributed and wound up. He has not provided a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account. I find that the document produced to signify the accounts is not adequate to meet the threshold for accounting set in law.

30. The confirmation of grant was therefore a nullity having been predicated on misrepresentation and concealment of facts. In the case of **Republic vs The Business Premises Rent Tribunal Respondent Lenco Investments Limited Interested party and Samina Investments Limited exparte Applicant Nairobi Misc Application Number 562 of 2007** Nyamu J (as he then was) set down the guidelines on dealing with illegalities thus:

i. A nullity is a nullity and always remains a nullity.

ii. If nullities are condoned by the courts of law, they are capable of clogging the justice system, eroding its effectiveness and respect of the rule of law.

iii. Failing to act in the circumstance would be a serious abdication of the seat of justice.

iv. The principle to be observed is the principle that no litigant should be allowed to benefit from irregularities or nullities since these would be against the policy of law.

v. Nullities are defects and cobwebs in our legal system which if allowed to remain would discredit and litter, derail the administration of justice in accordance with the law.

vi. It would be unjust for the court not to intervene in the face of a nullity where the tribunal and the lower court had no jurisdiction from the word go.

vii. Where preservation of the status quo is a threat to the rule of law, the conscience of this court, the spirit and its sense of justice cannot allow the preservation of the status quo.

viii. It cannot be good law to allow a party benefit from a blatant violation of the law.

31. Applying those guidelines and the provisions of **Section 76** of the Law of Succession Act in the proceedings herein, it is clear that there has been a clear presence and evidence of blatant flouting and trampling of the law, and exploitation of the situation for individual gain in an attempt to disinherit the beneficiaries of the estate of the deceased. Failure to act firmly against those illegalities and irregularities will amount to a serious abdication of the seat of justice.

32. **Rule 73** of the Probate and Administration Rules enshrines the inherent power of the court as follows:

“Nothing in this rule shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court”.

Indeed the applicant has made a good case for the removal of the administrator on account of obtaining a grant through concealment of material facts, the disposal of estate property after confirmation of grant without consent and failure to render accounts within the period appointed by law. Bearing in mind the wishes of the rest of the beneficiaries of the estate of the deceased to receive their share of the proceeds of the sale of the suit property, these are the orders that I am disposed to make in the matter:

- i. That the administrator herein shall deposit in Court the full amount of the proceeds of sale of the property known as L.R No. 209/1894 together with the instruments of sale within the next thirty (30) days;
- ii. That in default of (i) above, the grant of letters of administration intestate made herein on 10th October, 1988 and confirmed on 15th November, 1988 shall stand revoked;
- iii. That failure to comply with (i) above will render the sale and transfer of the property known as L.R No. 209/1874 by Trilok Nath Gandhi to any 3rd party null and void;
- iv. That the matter to be mentioned for compliance after forty five (45) days;
- v. No order as to costs

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 9TH DAY OF MARCH, 2021.

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L. A. ACHODE

HIGH COURT JUDGE

In the presence ofAdvocate for the Applicant

In the presence of ...Advocate for the Respondent/Administrator