



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
SUCCESSION CAUSE NO. 768 OF 2009
IN THE MATTER OF THE ESTATE OF
THE LATE HARVINDER SINGH REHAL (DECEASED)

AND

IN THE MATTER OF AN APPLICATION BY THE DEFENDANTS OF THE ESTATE

AMARDEEP SINGH REHAL

BALVINDER SINGH REHAL.....BENEFICIARIES/APPLICANT

VERSUS

KARMJIT KAUR REHAL.....PETITIONER/RESPONDENT

RULING

The Applicant, **AMARDEEP SINGH REHAL**, is a son of the deceased, **HARVINDER SINGH REHAL**.

1. The Respondent, **KARMJIT KAUR REHAL** is the mother of the Applicant.
2. The Applicant has asked the Court to order his mother to remit to him the sum of Kshs 100,000/= every month.
3. Secondly, the Applicant has asked the Court to order the Respondent to remit to him the sum of Kshs 6,724,280/28, which are arrears due to him on account of the monthly payments of Kshs 100,000/= which the Respondent had not paid over the years.
4. The arrears are said to have accumulated because the Respondent used to remit

“erratic payments of Kshs 40,000.00 or thereabouts upto sometime in July 2017 when the payments stopped completely.”

5. It was the Applicant’s prayer that if the Respondent failed to clear the arrears, and also failed to remit the ongoing monthly payments, the Court ought to give an order which would enable the money to be recovered through deductions from the monthly rental income collected from **L.R. NO. KISUMU MUNICIPALITY/BLOCK 7/92**.
6. Finally, the Applicant asked the Court to order the Respondent to provide accounts showing the money which she had paid to the Applicant from October 2014, to date.
7. In answer to the application, the Respondent filed an affidavit which was sworn on 6th May 2021.
8. The Respondent deponed that;

“8. THAT immediately after issuance of the Certificate for Confirmation of Grant on 2nd July 2020, I began remitting to the Applicant Kshs 100,000/= as ordered, and as at December 2014, I had paid him Kshs 8,176,081/=, an excess of Kshs 7,676,081/= which he was entitled to that year.”

9. The Grant was confirmed on 10th June 2014, and the Certificate of Confirmation of Grant was issued on 2nd July 2014.
10. From the “*Statement of Accounts*” provided by the Respondent, the amount of money paid to the Applicant by December 2014 was Ksh 8,176,081/=.
11. If the Applicant received that amount over the period of five months, that implies that the Respondent had pre-paid the Applicant by an amount exceeding Kshs 7.5 Million.
12. By my calculations, the period from July 2014 until July 2021 is 7 years.
13. Considering that in every year the Applicant should have been receiving Kshs 1,200,000/=, the total amount he ought to have received over the period of 7 years would be Kshs 8,400,000/=.
14. On the one hand, the Applicant insists that he is still owed a total of Kshs 6,724,280/28, as at March 2021, whilst the Respondent asserts that she has pre-paid the sum of Kshs 3,849,968/=, as at December 2020.
15. I hold the considered opinion that the onus is upon the Respondent to prove the remittances she has made to the Applicant.
16. In that regard, I find that the Statement of Account which the Respondent has annexed to her replying affidavit, falls short of a proper account. I so hold because the Respondent ought to provide particulars such as the cheque numbers used to make payments to the Applicant.
17. If the Respondent could also provide the bank statements, from which it could be verified that the payments made by cheques, were duly debited to the bank account, that would be useful.
18. Furthermore, where she paid cash to the Applicant, and the Applicant has cited a different figure in his records, it would be necessary for the Respondent to provide records from which the court can verify the payments made.
19. Meanwhile, I also find it prudent to comment on the “*discrepancies*” pointed out by the Applicant in his submissions.
20. Whereas the Applicant talks about payments of Kshs 25,000/= each, in the months of January, February and March, 2015; the figures cited in the Respondent’s statement of account, in respect to those 3 months were Kshs 40,000/=; 73,093/=; and 72,083/=, respectively. My said figures are derived by adding the sums described as “*cash*” payments, to the payments made by cheque.
21. From the Respondent’s records, she stopped making remittances in July 2018.
22. Whereas it may be arguable that the Applicant had received more money than what the Respondent was obliged to remit to him by that date, I cannot help but feel that the abrupt stop in remittances has given rise to the Applicant’s recent complaints.
23. I therefore direct the Respondent to provide the Court and the Applicant with detailed information, explaining the substantial payments which she allegedly made in October and November 2014. There must, surely be an explanation why a person who was entitled to receive Kshs 100,000/= monthly; ended up with Kshs 800,000/= in October 2014, and a further Kshs 7,100,000/= in November 2014.
24. Similarly, I hold the considered view that the Applicant must be compelled to explain himself to the Court, about why he had remained silent for so long, if indeed, from the very beginning, the Applicant had not been remitting the money in accordance with the Court order. For instance, in November and December 2014; as well as for 8 months in 2016, the Respondent allegedly failed to make any remittance.
25. Furthermore, if the Applicant’s figures are accurate, it would mean that from August 2017, to date, he has received absolutely no remittance at all.
26. Meanwhile, on the ground set out on the face of his application, the Applicant indicated that it was from the year 2015 when the Applicant failed to comply with the Court order.
27. The statement is at variance with the “*statement*” provided by the Applicant.
28. To my mind, the long period of inaction, on the part of the Applicant, appears to be more consistent with the position taken by the Respondent, than with the Applicant’s claim. In other words, it appears more probable than not, that the Applicant had been pre-paid.
29. Nonetheless, the Court wants to give further Orders and Directions after getting supporting documents from the 2 parties. As already indicated above, the parties should also provide their respective explanations, on oath: and each party must also provide all documents that will help the Court verify their assertions.
30. The said affidavits and supporting documents are to be filed and served within the next 14 days.
31. Each party shall meet his or her own costs of the application.
32. Finally, the Court will set a date when it will give the final orders, after it will have given consideration to the information required from the parties.

DATED, SIGNED AT DELIVERED AT KISUMU THIS 20TH DAY OF SEPTEMBER 2021.

FRED A. OCHIENG

JUDGE