



**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 application dated 23<sup>rd</sup> May 2020 was brought by **AMARDEEP SINGH REHAL** and his brother **BALVINDER SINGH REHAL**. The Respondent to the application is **KARMJIT KAUR REHAL**, who is the mother to the Applicants, and who was the Petitioner.

1. The Applicants sought orders to compel the Respondent to do the following;

*“(a) To, within one calendar month,*

*produce to the court and the*

*Applicants herein a full inventory*

*of all assets and liabilities of the*

*estate of the deceased from 22<sup>nd</sup>*

*December 2009 upto date.*

*(b) To, within one calendar month,*

*produce to the court and the*

*Applicants herein a full and accurate*

*account of all dealings therewith*

**including but not limited to:-**

**i. LR KSM/MUN/BLOCK 7/92**

**ii. LR/KSM/MUN/BLOCK 8/179**

**iii. LR KSM/KANYAKWAR 'A'/70**

**iv. Plant Machinery and Stock**

**v. Income – Manjit Building Contractor**

**vi. Statutory Taxes paid**

**vii. The Respondent do account for all the rental income from the property LR NO. KSM/MUN/BLOCK 7/92 since 2009 together with the loan received from the Kenya Commercial Bank Ltd. in receipt of the same property and the repayments made so far, if any.**

**(c) To complete administration of the**

**Estate; by way of distribution and in**

**respect of all matters and produce**

**to the Honourable court a full and**

**accurate account of the completed**

**administration.”**

2. The Applicants also sought the costs of the application.

3. The application was supported by the affidavit of Amardeep. By his said affidavit Amardeep deponed, inter alia, that the deceased, **HARVINDER SINGH REHAL** was survived by his wife and the following four children;

**(i) Balvinder S. Rehal;**

**(ii) Amardeep S. Rehal;**

**(iii) Jasdeep S. Rehal; and**

**(iv) Jatinderpal S. Rehal.**

4. At paragraph 4 of the affidavit, Amardeep stated as follows;

**“THAT I also know of my own**

**knowledge that our father let a**

**will in which he bequeathed the**

**entire of his estate to our mother/**

**Respondent herein.”**

5. At paragraph 5 of his affidavit, Amardeep said;

**“THAT our understanding then was**

**that our late father did that in good**

**faith in entrusting the custody of the**

*estate on our mother, to hold on her  
own behalf and in trust for their four  
(4) sons, Balvinder, Jasdeep, Jatinderpal  
and myself as beneficiaries.”*

6. At paragraph 6 of his affidavit Amardeep stated thus;

*“THAT I also know of my own knowledge  
that upon the demise of our father all the  
four (4) sons did execute the necessary  
consents that led to the issuance of Limited  
Grant of Administration which was  
subsequently confirmed. Annexed herewith  
and marked ASR-1 is a copy of the  
certificate of confirmation of grant.”*

7. It is the case of the Applicants that the Respondent had, since the confirmation of the Grant, administered and managed the Estate of the deceased without regard to the interests of the beneficiaries.

8. Amardeep expressly deponed that the Respondent had never given to the Applicants any money for upkeep.

9. This current application was said to have become necessary because the Applicants desperately required provision for their upkeep.

10. They feel that their mother had divided the family into 2, by recognizing and supporting Jasdeep and Jatinderpal, whilst totally neglecting the Applicants.

11. The Applicants submitted that the Respondent cannot be permitted to do whatever she pleases with the property which constituted the Estate of her late husband. That is the reason why the Applicants requested this court to call the Respondent to account.

12. The Applicants were apprehensive that the Estate would be wasted, unless the court granted the orders sought herein.

13. In answer to the application, the Respondent first took issue with the procedure used. She submitted that the application ought to be dismissed because it was brought pursuant to **Order 51 Rule 1** of the **Civil Procedure Rules**, whereas by dint of the provisions of **Section 97** of the **Law of Succession Act**, the said Civil Procedure Rules had no application to that Succession Cause.

14. **Section 97** of the **Law of Succession Act** stipulates that **The Rules Committee** may make rules of procedure generally, for carrying out the purposes and provisions of that statute.

15. In so far as the provisions of **Order 51 Rule 1** of the **Civil Procedure Rules** has not been expressly prescribed by the **Rules Committee**, as being applicable to applications made pursuant to the **Law of Succession Act**, I hold that the same has no application to Succession Causes.

16. If that was the only provision pursuant to which the Applicants had moved the court, there is a possibility that the court could have struck out the application.

17. However, it is notable that the application before me was also said to have been brought under **Section 83 (e), (f) and (g)** of the **Law of Succession Act**.

18. The said **Section 83** spells out the Duties of Personal Representatives. Under **Section 3 (1)** of the **Law of Succession Act**, a Personal Representative is defined as the Executor or the Administrator of a deceased person.

19. Pursuant to **Section 83** the personal representative has, inter alia, the following duties;

*“(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 the dealings therewith up to the date of 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 paragraph of the 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."*

**20.** In the light of those express provisions of **Section 83** of the **Law of Succession Act**, the court finds that the Applicants have moved the court in line with appropriate provisions of the law. Accordingly, I reject the Respondent's invitation, that the application be dismissed, for allegedly being defective.

**21.** **Section 83 (e)** of the **Law of Succession Act** comes into play within 6 months from the date of the Grant.

**22.** In this case, the Grant of Probate was made on 9<sup>th</sup> December 2011. It is significant that prior to the issuance of the Grant of Probate Amardeep had filed an application for leave to file a Notice of Objection for the grant.

23. Although the Grant was subsequently issued, the Court allowed Amardeep to lodge a formal objection to the Grant being confirmed.
24. In accordance with the directions given by the Court, Amardeep lodged an Affidavit in Opposition to the Confirmation of the Grant; the said affidavit was filed in court on 22<sup>nd</sup> June 2012.
25. The record of the proceedings shows that the parties informed the Court that they were holding negotiations.
26. The point I am making is that at all material times Amardeep was well aware of these proceedings, and that, therefore, he could have moved the court under **Section 83 (e)**, with a view to compelling the Respondent to produce an Inventory of Assets and Liabilities.
27. Under **Section 83 (f)** the Applicants herein could have made out their case for the alleged trust.
28. By an application dated 19<sup>th</sup> July 2014 Balvinder Singh Rehal sought an Inventory of Assets and Liabilities. He also sought an Order to compel the Respondent herein to complete the administration of the estate by way of distribution.
29. In answer to that application, the Respondent said that the same had been brought late, as the Grant had been confirmed on 10<sup>th</sup> June 2014.
30. When the Applicants made the point that confirmation of the Grant brings to an end the Administration of the Estate, they were right.
31. **Section 71** of the **Law of Succession Act** alludes to the function of confirmation of a grant, as follows;

*“71 (1) After the expiration of a period*

*of six months, or such shorter*

*period as the court may direct*

*under subsection (3), from the*

*date of any grant of*

*representation, the holder*

*thereof shall apply to the court*

*for confirmation of the grant in*

*order to empower the distribution*

*of any capital assets.”*

32. In effect, the confirmation of the Grant gives power to the holder of the said Grant of Representation, to distribute the capital assets.
33. The mode of distribution of the assets is to be specified in the Certificate of Confirmation of Grant.
34. Based on the said mode of distribution, each of the beneficiaries becomes entitled to take steps with a view to transferring their respective shares, to their own names.
35. In this case, the Certificate of Confirmation of Grant expressly provided that **KARMJIT KAUR REHAL** would get 100% of all real and personal Estate as per the annexed Will dated 18<sup>th</sup> March 1988.
36. Secondly, the confirmed Grant provided that **AMARDEEP SINGH REHAL** would get Kshs 100,000/= per month as provision for his upkeep.
37. It would therefore follow that if the Respondent caused to be transferred to her name, all the real and personal estate of the deceased, as per the Will dated 18<sup>th</sup> March 1988, she was executing the distribution of the estate, in terms of the Certificate of Confirmation of Grant.
38. After a beneficiary acquires title of his or her share of the estate, the same becomes the property of the said beneficiary.
39. The beneficiary who has lawfully acquired title to his or her share of the estate is not under any obligation to produce accounts either to the court or to other beneficiaries, concerning how he or she has utilized the said property.

40. In this instance, the Applicants have not challenged the validity of either the Will or of the Certificate of Confirmation of Grant. Therefore, those two instruments remain the legitimate means through which the Respondent acquired all the real and personal assets of the deceased.

41. Through the Certificate of Confirmation of Grant, Amardeep became entitled to Kshs 100,000/= every month.

42. I find that unless the Respondent can demonstrate that she has been paying to Amardeep the said monthly provision, the Respondent is indebted to Amardeep to the extent of such money as she has not been remitting.

43. Similarly, in respect to future months, Amardeep remains entitled to continue receiving the said monthly provisions of Kshs 100,000/=.

44. To that extent, Amardeep is entitled to an Account, demonstrating what sums the Respondent has been remitting to him.

45. As regards Balvinder Singh Rehal, there was no provision made for him in the Certificate of Confirmation of Grant. Therefore, there is no legal basis upon which I can order that the Respondent makes provision for him.

46. Of course, there would be an expectation that the mother of the four sons should have a moral obligation to support them, if she has the ability to do so.

47. However, such a moral obligation does not give rise to a legal responsibility which the court could be called upon to enforce.

48. I also find that the moral responsibility of the Respondent, as the mother of the Applicants, does not, of itself, give rise to a continuing trust that could compel her to provide for them.

49. A continuing trust, if proved, is to be incorporated into the Certificate of Confirmation of Grant.

50. In this case, the Applicants have failed to satisfy the court that the Respondent held the real or the personal assets of the deceased, in trust for the Applicants.

51. But notwithstanding the absence of a trust in favour of the Applicants, the Respondent was under a statutory obligation to produce to the court, a full and accurate account of the completed administration. The said obligation arises from **Section 83 (g) of the Law of Succession Act**.

52. Accordingly, I now order the Respondent to produce to the court, a full and accurate account of the completed administration; the said account must be produced within the next 30 days from today.

53. Finally, I order each party to meet his or her own costs of the application.

**DATED, SIGNED AT DELIVERED AT KISUMU THIS 6TH DAY OF MAY 2020**

**FRED A. OCHIENG**

**JUDGE**