



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

SUCCESSION NO. 259 OF 2013

IN THE MATTER OF THE ESTATE OF DALIP SINGH DHANJAL (DECEASED)

RULING

1. Dalip Singh Dhanjal (the deceased) died on 15.7.10. Following his death, his son Nirmal Singh Dhanjal (Nirmal) applied for grant of letters of administration claiming his was the sole survivor of the deceased. A grant was duly issued to him on 19.12.13 and confirmed on 14.2.14. By an application dated 21.1.16, however, Jaswinder Kaur Koundu (Jaswinder), a daughter of the deceased, sought revocation of the grant on the ground that the same was obtained without her involvement and that the Nirmal concealed to the Court that she too, survived the deceased. By consent of the parties, the Court on 26.11.18 revoked the grant issued to Nirmal and a fresh grant (the Grant) issued to Jaswinder and Nirmal.

2. Jaswinder has now filed an application dated 28.1.2020, seeking the following orders:

a. Spent.

b. THAT pending the hearing and determination of this Application, Nirmal Singh Dhanjal be strictly enjoined and restrained whether by himself, servants and/or agents from disposing of any assets of whatever kind comprising the estate of Dalip Singh Dhanjal (deceased).

c. THAT the Grant of Letters of Administration Intestate issued by this Honourable Court to Nirmal Singh Dhanjal on the 26th November 2018 be revoked.

d. THAT this this Honourable Court be pleased to give such directions as may be fit and just in the circumstances of the case.

e. THAT the costs of this application be provided for.

3. In her affidavits sworn on 28.1.2020 and 13.2.2020, Jaswinder avers that Nirmal has failed to comply with the terms of the consent order of 26.11.18. The consent order required Nirmal to provide a full and accurate account of the estate from 19.12.13 to the date of the consent. He was also required to make a full disclosure of all contracts, arrangements, agreements, undertakings, litigation, etc relating to and involving the estate. Further, Nirmal was to provide a written indemnity in favour of Jaswinder from all claims that may be brought by any one for costs, disturbance, expenses, damages, and losses of whatsoever nature in connection with the estate from 19.12.13 to date of consent. All this was to be done by 31.3.19.

4. Jaswinder claims that on 26.6.19, Nirmal filed what he purported to be statements of accounts for the period 2013 to 2018 which are inadequate and riddled with material non-disclosure and misrepresentations. According to Jaswinder, it is not possible to reconcile the accounts with assets of the estate listed by Nirmal in his petition for the revoked grant, the list of assets filed on 1.3.19 and that filed on 21.5.19 by Messrs Christine Kipsang & Company.

5. Jaswinder further alleges that Nirmal withdrew all funds in the deceased's bank accounts. Nirmal has sold and has been seeking to sell land belonging to the estate and to companies in which the estate holds shares. Jaswinder stated that unless the prayers sought herein are granted, she and the beneficiaries of the estate will be seriously prejudiced. Jaswinder contends that because of his conduct and potential claims by the estate against him, Nirmal is seriously conflicted and is therefore not a fit and proper person to administer the estate of the deceased.

6. Nirmal opposed the Application by his replying affidavit sworn on 5.12.2020, in which he denied all allegations of impropriety levelled against him by Jaswinder. He averred that contrary to Jaswinder's allegations, he had filed accounts of the estate up to the year 2018 in an affidavit sworn on 27.6.19. The details of the contracts and litigations relating to the estate are set out in paragraph 5 of the said affidavit while the indemnity sought by Jaswinder is in paragraph 7. As regards the properties of the estate, Nirmal stated that he gave a detailed explanation of the same together with copies of ownership documents in his affidavit filed on 14.5.19 as directed by the Court. The firm of

Christine Kipsang & Company Advocates filed a list of assets dated 28.2.19 but without copies of ownership documents. Nirmal denied that the said assets belong to the deceased.

7. Nirmal further stated that Title Nos. Msa/ Block XVI/292, 293, 294, 295, 296, 297, 298, 299 and 1471 are registered in the name of Jaypee & Sons Limited. There are cautions registered against them by persons claiming purchaser's interest. These cautions were registered on 31.8.09 before the demise of the deceased who died on 15.7.10, and by extension, before Nirmal became administrator. Nirmal further stated that he has never interfered with the shareholding of Jaypee & Sons Limited, nor has he sold or attempted to sell any of its properties. He also denied knowledge of a property known as Mombasa/Block XVI/469, the title of which was issued to Jaypee & Sons on 30.5.19, nor of any transaction relating to the same. The loans secured by charges against Plot No. 901/I/MN where Travellers Beach Hotel stands, were advanced on 5.8.96 and 29.8.96, during the lifetimes of the deceased and his 3 brothers, Jaswant Singh Dhanjal, Navrinder Singh Dhanjal and Baldev Singh Dhanjal and not him as administrator of the estate herein.

8. I have considered the Application, the rival affidavits and documents filed together with the submissions by the parties' counsel.

9. Jaswinder's prayer is that the grant issued to Nirmal on 26.11.18 be revoked. It must be noted that the grant issued on 26.11.18 was issued to both Jaswinder and Nirmal. As such, if the same were to be revoked, the revocation would apply to both Nirmal and Jaswinder. The proper order to seek is that the grant be revoked and a new one issued to her.

10. Be that as it may, the grounds upon which Jaswinder seeks the revocation of the grant issued on 26.11.18, are that Nirmal failed to provide, a full and accurate account of the estate and his dealings therewith from 19.12.13 to the date of the consent of 26.11.18 by 31.3.19 as directed by the Court. She further states that the accounts filed are inadequate and riddled with material non-disclosure and misrepresentations. Nirmal denied these allegations. His position is that he did file accounts and details of contracts and litigations on 28.6.19. He also stated that he made disclosure of the assets of the estate.

11. I have looked at Nirmal's affidavit in support of his petition for grant sworn on 8.5.13. He listed the following as assets of the estate:

Plots Nos.

868/I/MN; 1557/I/MN; 917/I/MN; 3082/I/MN; 4122/I/MN; 1550/I/MN; 9147/I/MN; 9240/I/MN; 9247/I/MN; 437/I/MN; 445/I/MN; 1248/VI/MN; 292-299/XVI; Mombasa/Block X/30; Mombasa/Block XIII/55; Mombasa/Block XIX/191; Mombasa/Block X/377.

Companies

Dhanjal Investments Limited (DIL); Dhanjal Bros Limited (DBL); Dhanjal Properties Limited (DPL); Express Holdings Limited (Express); Chania Estuary Developers Limited (Chania); Chempac Limited (Chempac); Merryfield Limited (Merryfield); Pesce Limited (Pesce); Whitehart Holdings Limited (Whitehart) and Water Beach Investments Limited (Water Beach).

Bank accounts

KCB GBP Account; KCB USD Account; KCB EURO Account; Bank of Baroda Account; KCB Account; Bank of India Account; Equatorial Commercial Bank Account

12. I have also looked at Nirmal's affidavit sworn on 14.5.19. From the annexed documents of title annexed to the affidavit, none of the plots in the list of assets in the application for grant belonged to the deceased at the time of his demise. Plots Nos. 868/I/MN; 1557/I/MN; 917/I/MN and 9147/I/MN are registered in the name of DIL. Plot No. 3082/I/MN, previously owned by DIL, was on 1.10.2004 transferred to Manvinder Kaur Dhanjal. Plot No. 1550/I/MN was transferred to Stormy Waves Properties Limited by DIL on 20.6.05. Plot No. 4122/I/MN is in the name of DPL. Plot No. 9240/I/MN is in the name of Hakimi Glass Mart Limited; Plot Nos. 9247/I/MN; 437/I/MN; 445/I/MN; 1248/VI/MN are in the name of DBL; Plots Nos. 292-299/XVI are in the name of Jaypee & Sons Limited; Plots Nos. Mombasa/Block X/30; Mombasa/Block XIII/55; Mombasa/Block XIX/191; Mombasa/Block X/377 are in the names of the deceased and his 3 brothers.

13. The search report in respect of Plot No. 9240/I/MN does not indicate when this plot was transferred to Hakimi Glass Mart Limited. It is not clear when this property was transferred to Hakimi Glass Mart Limited and by whom? Given that Nirmal had included this property as part of the estate of the deceased, it is necessary that he gives an explanation as to how and when the property ended up with Hakimi Glass Mart Limited.

14. The next list of assets are the companies. The documents exhibited by Nirmal show that the deceased holds 18,750 shares in DIL; 125 shares in DPL; 1250 shares in Express; 1 share in Chania; 1 share in Chempac; 1 share in Pesce; 1 share in Whitehart. The search in respect of DBL shows that the deceased does not own any shares in DBL and an explanation is required as to why this is so.

15. Although Jaypee & Sons Ltd is not in the list of assets filed by Nirmal when he applied for the grant, the search report filed by him indicates that the deceased owned 1 share in the company. This share must be included in the list of assets to be distributed to the beneficiaries. As regards Merryfield, Nirmal stated that it owns 2 properties, one of which is in the control of his uncle Narinder Singh Dhanjal and the other in the control of his sister. For the purpose of the proceedings herein, the Court is interested in the shareholding which is not indicated. It is necessary for Nirmal to disclose the number of shares the deceased held in this company.

16. Nirmal states that Water Beach was wrongly listed. The deceased held no shares in the company. The search report indicates that the shareholders are Beatrice Nduku Muli and Eustuce Ephantus Thegetha.

17. I now turn to the bank accounts. The statements exhibited by Nirmal indicate that the KCB GBP, USD EURO and KES accounts, Bank

of India account and Spire Bank account (formerly Equatorial Commercial Bank) all belong to DIL t/a Travellers. The only account in the name of the deceased is the one in Bank of Baroda. A letter from the bank dated 26.4.19 indicates that the entire balance of Kshs. 70,727.40 was forwarded to the Unclaimed Assets Authority.

18. As regards the audited accounts, it is noted that the estate received rental income from the Tudor house and Godown. There is also the estate's 25% share of the earnings from Dhanjal Investments Limited. There is need for explanation as to how this income was applied.

19. The list of assets filed by Kipsang & Company Advocates on 1.3.19, indicated that the following plots were registered in the name of the deceased:

Plot No. MN/I/8841; Plot No. 9283; Plot No. 2421/I/MN; Plot No. Kwale/Diani Complex/128; Plot No. 1410; Plot No. 5213; CR 1495/1 or 14951/3; Allotment Ref. No. 76474/VI/216 Plot K; Plot No. 8681/I/MN and Plot No. 9171/I/MN.

20. Other listed properties are those owned by various companies and the 4 brothers in common. There is also a list of moveable assets. Notably, no documents of title or ownership of the immovable and moveable properties allegedly owned by the deceased were produced to the Court. The Court can only deal with the properties as part of the estate once it is established that the same are indeed owned by the deceased.

21. For the purposes of the proceedings herein, the assets that are relevant to the Court are those listed in the affidavit sworn by Nirmal on 8.8.19 in support of the application for the grant. I am therefore unable to find that the allegation by Jaswinder, that the accounts and the list of assets filed by Nirmal and Kipsang & Company Advocates cannot be reconciled. The details of litigations filed, relate not to the estate, but to companies where the deceased was a shareholder. Further, the cautions against the titles in the name of Jaypee & Sons were registered before the demise of the deceased. As such, it cannot be said that Nirmal has been trying to sell the properties. In any event, the said properties do not belong to the estate of the deceased.

22. The jurisdiction of the Court to revoke a grant of representation is contained in Section 76 of the Law of Succession Act, which provides:

76. 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.

23. The Court had by its order of 26.11.18 directed Nirmal to file accounts by 31.3.19. He did not do so until 14.5.19 and 28.6.19. Failure to file accounts of administration of the estate within the time prescribed, is by dint of Section 76 (d)(iii) of the Act a ground for revocation of the grant.

24. The power of the Court to revoke grants of representation is discretionary. Section 76 of the Act is not couched in mandatory terms. This discretion must however be exercised judicially, not losing sight of the fact that the ultimate goal is to arrive at a decision that meets the ends of justice. In In the Matter of the Estate of Elizabeth Wanjiku Munge (Deceased) [2015] eKLRMusyoka, J. stated as follows, and I agree with him entirely:

I note, however, that the power granted under Section 76 of the Act for revocation of grants is discretionary. Where a case is made out for revocation of a grant under Section 76, the court has the option to either revoke the grant or make other orders as may meet the ends of justice.

25. In the instant case, it is common ground that Nirmal did not file the accounts Court within the time prescribed. Further, there is need to provide some clarification with regards to the filed accounts, as indicated herein. I am, however, not persuaded that the ends of justice will be best served by the revocation of grant herein.

26. I now turn to the prayer that Nirmal be restrained whether by himself, servants and/or agents from disposing of any assets of whatever kind comprising the estate of Dalip Singh Dhanjal (deceased). It is trite law that where a grant of representation is made to 2 or more persons, such persons must act jointly in all dealings with the estate in respect of which they have been appointed. Any dealings by one administrator without involving the other administrator or administrators are void. In this regard, Jaswinder and Nirmal must act jointly in all dealings with the estate of the deceased.

27. Before I conclude, I must say that there is need for parties herein to appreciate that a distinction is to be made between properties belonging to the estate of the deceased and those belonging to companies where the deceased was a shareholder. As far as the companies are concerned, the parties' interest is limited to the shares that the deceased held in those companies.

28. The upshot of this Ruling is that I find no reason to revoke the grant issued to Nirmal and Jaswinder. The justice of the case requires that the summons for confirmation of grant dated 18.1.19 be set down for hearing for the expeditious disposal of the same, noting that the deceased has been dead for 10 years now.

29. In exercise of the powers conferred upon this Court by Section 47 of the Act, I now make the following orders which are necessary for the ends of justice:

- a. Nirmal Singh Dhanjal be and is hereby restrained whether by himself, servants and/or agents from singlehandedly dealing with any assets of whatever kind comprising the estate of the deceased, Dalip Singh Dhanjal without involving Jaswinder Kaur Koundu, his co-administrator.
- b. Nirmal Singh Dhanjal shall within 30 days file in Court an affidavit setting out:
 - i. his dealings with the estate's 25% share in the earnings from Dhanjal Investments Limited.
 - ii. his dealings with the rental income from the Tudor house and Godown.
 - iii. the number of shares the deceased holds in Merryfield Limited.
 - iv. what became of the deceased's shares in Dhanjal Brothers Limited.
 - v. whether Plot No. 9240/I/MN belonged to the deceased, when and by whom the same was transferred to Hakimi Glass Mart Limited.
- c. Costs in the cause.

DATED, SIGNED and DELIVERED in MOMBASA this 5th day of May 2020

M. THANDE

JUDGE

In the presence of: -

..... **for the Jaswinder**

..... **for the Nirmal**

..... **for the Sukhwant**

..... **Court Assistant**