



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. The matter herein relates to the estate of Dalip Singh Dhanjal (the deceased). The background is that the deceased died on 15.7.10 and a grant of letters of administration was issued to his son Nirmal Singh Dhanjal (Nirmal) on 19.12.13. The Grant was confirmed on 14.2.14. According to the certificate of confirmation of grant dated 17.2.14, the entire estate of the deceased was to devolve upon Nirmal wholly, as the sole surviving heir of the deceased. However, it subsequently emerged that Nirmal had misrepresented to the Court that he was the only heir of the deceased. By an application dated 21.1.16, Jaswinder Kaur Koundu (Jaswinder), a daughter of the deceased sought revocation of the grant on the ground the same was obtained fraudulently without her involvement and by excluding her as a beneficiary of the estate. By consent of the parties, the Court on 26.11.18 revoked the grant issued to Nirmal and a fresh grant was issued to Jaswinder and Nirmal
2. By an application dated 12.11.18, Sukhwant Kaur Dhanjal Kundi (Sukhwant) sought the enjoinder of herself and her brother Joginder Singh Dhanjal (Joginder) as interested parties in the matter herein. Both Sukhwant and Joginder are administrators of the estate of their father Jaswant Singh Boor Singh Dhanjal (Jaswant), a brother to the deceased. The matter relating to the estate of Jaswant is pending before this Court.
3. The Application is premised on the grounds contained in Sukhwant's affidavits sworn on 8.11.18 and 20.11.18. She avers that her father and the deceased owned and developed properties and operated businesses jointly as an extended Asian family. As such, there is need for similar continuity in jointly collecting in and distributing the jointly owned estates, to the children of both deceased persons. From Sukhwant's affidavit, it emerged that the deceased had not 2 but 3 children. In addition to Nirmal and Jaswinder, there was Kirpal Singh Dhanjal also known as Rajpal Singh Dhanjal (Rajpal), born on 2.8.72. Rajpal died on 25.10.06 but left a widow Inderpal Dhanjal who he had married on 20.4.97, and a son, Jasdev Singh Dhanjal born on 10.1.06. They both live in the United Kingdom and should not be excluded from the estate of the deceased.
4. Sukhwant further states that the reason for the Application is to join in any applications in the matter herein; to inform the Court of the deceased's true beneficiaries, noting that Jaswinder made an untrue statement that she is entitled to half the estate of the deceased; to apply to be appointed administrator in the estate herein; for her and Joginder to work with the other administrators to ensure efficient distribution of the estate; to inform the Court that Jaswinder is intermeddling with the property known as NGL308786 – 2 Waxlow Crescent, Southall, Middlesex UB1 2SP, United Kingdom, owned by Merryfield Limited the shares of which are owned by her father and the deceased; to inform the Court that Merryfield Limited has been struck off the Company register in the Isle of Man; that swift action is required by both estates to reinstate the company and to protect its properties. Sukhwant further made reference to a settlement agreement which this Court found to be void.
5. Nirmal opposed the Application in his replying affidavit sworn on 21.11.18. He averred that the reasons which Sukhwant seeks joinder herein are devoid of nexus between owning joint property by the 2 deceased persons and the present proceedings. He further averred that barely 14 days after obtaining a grant in respect of the estate of Jaswant, Sukhwant and Joginder now wish to be enjoined herein for the sole purpose of applying to be appointed administrators herein. They are yet to administer, distribute and settle the estate of their late father and it is ambitious of them to delve into the administration of another estate. Nirmal further states that Sukhwant states that the 2 estates should be administered together yet she has not invited any of the children of the deceased to join them in the administration of their father's estate. On the property in the United Kingdom, Nirmal averred that this Court does not have jurisdiction over the same.
6. After considering the Application, the rival affidavits and submissions by the parties' respective counsel, the only issue for determination is whether Sukhwant has persuaded the Court to enjoin her and Joginder as interested parties herein with the ultimate objective of being appointed administrators.
7. The stated principal reason why Sukhwant seeks to be enjoined as interested party together with Joginder is so that they may apply to be appointed administrator in the estate herein. Indeed this was the thrust of Sukhwant's counsel's submissions in Court.
8. The Law of Succession Act (the Act) under which this Application is brought, contains very specific procedural provisions on how to

move the Court. Rule 59 of the Probate and Administration Rules (the Rules) provides:

Save where otherwise provided in these Rules every application to the court or to a registry shall be brought in the form of a petition, caveat or summons as may be appropriate.

9. A person approaching this Court may do so by petition, caveat or summons. The Rules also provide for the filing of objections. Sukhwant has moved this Court by way of a notice of motion which is an unknown procedure in the Act. The Court has however overlooked the procedural error in light of the provisions of Article 159(2)(d) of the Constitution of Kenya, 2010 which requires that justice be administered without undue regard to procedural technicalities.

10. A party seeking to be appointed administrator of an estate need not apply to be enjoined as an interested party. Such party can move the Court directly as provided for in the Act. Section 51(1) of the Act provides that every application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner. Rule 7(1) of the Rules stipulates that an application for a grant of representation shall be by petition in the appropriate form supported by an affidavit.

11. In the present case, a grant has already been issued to Nirmal and Jaswinder. According to the Act, the procedure available to Sukhwant to achieve her desire, is to apply in the prescribed procedure and form for the revocation of the existing grant and for the making of a grant to her and Joginder. The present application is therefore inappropriate for achieving her goal.

12. Further, Sukhwant's claim to the proceedings herein is that the estate of the deceased is intertwined with that of her father, as some properties were held jointly by the deceased herein and her father. Sukhwant has also claimed that she assisted the Court by bringing to its attention the existence of the widow and child of Jaspal. She also says that she has informed the Court of property of the estate in the United Kingdom. As such she wishes together with Joginder, to be enjoined in the proceedings herein.

13. Section 47 of the Law of Succession Act confers jurisdiction upon this Court to entertain any application and determine any dispute under the Act make such orders therein as may be expedient. Similarly, under Rule 73 of the Probate and Administration Rules, the inherent power of the Court to make such orders as may be necessary for the ends of justice, may not in any way be limited. This Court therefore has unfettered discretion to issue any orders that it deems necessary for the ends of justice in the matter herein.

14. Black's Law Dictionary Tenth Edition defines "interested party as:

A party who has a recognizable stake (and therefore standing) in a matter.

15. Do Sukhwant and Joginder have a recognisable stake in the matter herein that requires them to be enjoined as interested parties? Put differently, would failure to enjoin them result in their suffering any prejudice? It is to be noted that Sukhwant and Joginder are not children or beneficiaries of the estate herein. They have no stake in the estate herein. The fact their father and the deceased owned properties jointly, is no reason for them to seek to be enjoined herein as interested parties. For a party to be enjoined in proceedings, it must be demonstrated that such party has a clear interest in the case and any orders issued by the Court would affect such party. **In this regard, I follow Mativo, J in Kenya Medical Laboratory Technicians and Technologists Board & 6 others v Attorney General & 4 others [2017] eKLR, who observed:**

"It is a fundamental consideration that before a person can be joined as party, it must be established that the party has an interest in the case. In addition, it must be clearly demonstrated that the orders sought in the suit would directly and legally affect the party seeking to be enjoined."

16. The grant of letters of administration was issued to Jaswinder and Nirmal on 26.11.18. Summons for confirmation of the grant has been filed and is pending hearing. The Court appreciates that Sukhwant has made it aware that the deceased had a son, Jaspal, who died leaving a widow, Inderpal and a son, a fact which both Nirmal and Jaswinder had carefully concealed from the Court. This however does not give Sukhwant and Joginder a recognizable stake in the proceedings herein. In any event, it has not been argued that Inderpal is under any disability and therefore unable to litigate her and her son's interest in the estate. Indeed she has instructed counsel to represent here in this matter. On the properties in the United Kingdom, my view is that the same cannot be dealt with in this application. Moreover, this Court is quite capable of distinguishing between the estate of the deceased and that of Jaswant, notwithstanding that some of the assets are jointly held by both deceased persons. Similarly, the Court is well able to make a distinction between assets owned by the deceased and those owned by a company where he was a shareholder. As such, I am not persuaded that enjoining Sukhwant and her brother Joginder will add any value to the proceedings herein. Their being enjoined will not in my view assist the Court, but will serve to complicate the matter. Further, any attempt to deal with both estates herein will lead to enmeshment, thus convoluting the matter, which is totally unnecessary.

17. The upshot of this Ruling is that the Application dated 12.11.18 lacks merit and the same is hereby dismissed. On account that the Sukhwant has brought to the Court's attention information regarding the excluded beneficiaries, I direct that each party shall bear own costs.

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

M. THANDE

JUDGE

In the presence of: -

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

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

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

.....**Court Assistant**