



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1476 OF 2016

IN THE MATTER OF THE ESTATE OF AMRIK SINGH RIHAL (DECEASED)

HARJINDER SINGH RIHAL.....APPLICANT

VERSUS

MOHINDER KAUR RIHAL.....1ST RESPONDENT

JASWINDER SINGH RIHAL.....2ND RESPONDENT

RAVINDER KAUR RIHAL.....3RD RESPONDENT

RULING

1. The deceased Amrik Singh Rihal died on 26th December 2008 in London, but was domiciled in Kenya. He left a written Will dated 15th August 2008. He was survived by his widow Mohinder Kaur Rihal (1st respondent), son Jaswinder Singh Rihal (2nd respondent), daughter Ravinder Kaur Rihal (3rd respondent) and son Harjinder Singh Rihal (applicant). The respondents were named as the executors and trustees of the Will.
2. On 7th September 2016 the respondents petitioned for the grant of probate of written Will. The grant of probate was issued on 28th February 2017. The same was confirmed on 14th November 2017. According to the respondents the only asset left by the deceased was 25% in LR No. 209/138/91 with the buildings and improvements erected and being thereon. It vested in the 1st respondent under the Will.
3. On 15th May 2009 the applicant filed the present application seeking the revocation and/or annulment of the grant. The substance of the applicant's complaint was that the respondents had fraudulently omitted to disclose the following property that, he alleged, belonged to the deceased and which ought to have formed part of the petition:-
 - (a) LR No. 12325/8 Spring Valley;
 - (b) LR No. 1870/1/340 Sohos Bar;
 - (c) LR No. 209/136/91 Duruma Road, Nairobi;
 - (d) LR No. 209/245 Rihal House, Tom Mboya Street;
 - (e) LR No. 209/26/3 3rd Parklands Avenue, Nairobi; and
 - (f) RL No. 1870/1/342 Maua Close, Westlands, Nairobi.
4. The other property not disclosed were said to be LR No. 209/136/245, LR No. 3734/866 and LR No. 12325/22.
5. It was alleged that the respondents had failed to account to the beneficiaries as required under **section 83(e) and (g) of the Law of Succession Act**, had benefited from these properties alone and had fraudulently and systematically formed companies into which they had

transferred these properties. The companies were:-

- a) Gurbaksons Kenya Ltd;
- b) Bricon Properties Ltd;
- c) Gurbakison Properties Ltd; and
- d) Cotterbrook Properties Ltd.

The shareholders of the companies were indicated to be the 1st and 2nd respondents and a Mrs. Gurnfrnder Kaur Rihal.

6. The application was opposed by the respondents through the replying affidavit of the 2nd respondent. He denied that the properties in question belonged to the estate of the deceased. He stated that the only property in the name of the deceased was 25% in LR No. 209/138/91, Duruma Road in Nairobi. He annexed copy of title to show that the deceased was a tenant in common together with Ajit Singh Gurbaksh Singh, Joginder Singh Rihal and Balden Singh ("JSR 4"). This is the estate that had gone to the 1st respondent in accordance with the Will of the deceased.

7. As for LR No. 12325/8 Spring Valley, the 2nd respondent annexed a copy of the title ("JSSR 3") to show that it was transferred by the deceased to him and the 1st respondent on 28th November 1987. The 2nd respondent stated that he did not know about LR No. 209/245 Rihal House, but was aware of LR No. 209/136/245 Rihal House, Tom Mboya Street, which, since 1990, had been registered in the name of Cottes Brook Properties Limited ("JSR 5"). Regarding LR No. 1870/1/341 Sohos Bar, the 2nd respondent explained that there was extension of its lease under LR No. 25407 in 2001 in the name of Rihal Investments Limited, Mohinder Kaul wife of Amrik Singh son of Gurbaksh Singh and Charanjit Kaur wife of Joginder Singh son of Gurbakish Singh as tenants in common in equal shares on 3rd August 2001. The said property was now owned by the 1st respondent as 2/3 shareholder after the transfer of Rihal Investments Limited's 1/3 share to her on 11th July 2008 and himself as 1/3 shareholder after transfer to himself by Charanjit Kaur of her 1/3 share in 2014. Copy of title ("JSR 6") refers.

8. Regarding LR No. 209/26/3, Parklands, the 2nd respondent produced copy of title ("JSR 7") to show that the property had since since 2002 been registered in the name of Gurbksons (Kenya) Limited. As for LR No. 1870/1/342, the 2nd respondent stated that after its lease was extended it became LR No. 1870/1/588 in the name of Bricon Properties Limited to whom it had been transferred by Barclays Bank Kenya Ltd in 1990 (Copies of title ("JSR 8"). Lastly, he denied that the deceased had any interest in LR No. 12565/42 New Muthaiga which he said was commonly owned by him (25%), the applicant (25%), and Ramchand Mohan (50%); that Ramchand Mohan held the 50% in trust for him.

9. The applicant did not file a further affidavit to challenge the above evidence regarding the ownership of the properties in question. It was up to the applicant to show, by way of registrations, that the property stated in his application belonged to the deceased at the time of his death, and therefore formed part his estate, and that the respondents, as petitioners and persons to whom grant of probate had been issued, had failed to disclose the same. I find that the applicant did not prove that the properties were part of the estate of the deceased. The allegation of non-disclosure has therefore not been substantiated.

10. I am aware that a grant may be revoked if (**section 83(g) of the Act**) within six months from the date of confirmation of the grant, the person to whom it has been issued fails to complete the administration of the estate, and fails to produce to the court a full and accurate account of his dealings with the estate. In the instant case, however, the administration of the estate has been completed as the only property left by the deceased was, in accordance with the Will, transferred to the 1st respondent.

11. In conclusion, I find no merit in the application and dismiss it.

12. This is a family dispute. I ask that each side pays own costs.

DATED and SIGNED at NAIROBI this 14TH OCTOBER 2019.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 15TH OCTOBER 2019.

ALI-ARONI

JUDGE