



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 707 OF 1985

IN THE MATTER OF THE ESTATE OF GULAMHUSSEIN KARIM MEGHJI (DECEASED)

NIZAR KARIMAPPLICANT

VERSUS

FIRDOSH EBRAHIM JAMAL.....1ST RESPONDENT/ ADMINISTRATOR

ZEHRABANU JANMOHAMED.....2ND RESPONDENT/ ADMINISTRATOR

RULING

1. The deceased, Gulamhussein Karim, died intestate on 22nd January 1985. Following a consensus among the beneficiaries, grant of letters of administration were issued to Firdosh Ebrahim Jamal and Zehrabanu Janmohamed on 27th July 2011 and confirmed on the same day. The grant was later on rectified on 25th March 2014 for ease of distribution of the estate.

2. It was agreed that the properties of the deceased being land parcels LR No. 209/519/1 and LR No. 209/519/2; funds held at Natwest Bank, 15 Bishops Gate, London, EC2P 2AF, United Kingdom; shares in Diamond Trust Bank Limited; and rental income accrued from LR No. 209/519/1 and LR No. 209/519/2 less expenses be distributed as follows;

- a. 12.5% to the estate of Zainab Gulamhussein Karim Meghji (deceased);
- b. 12.5% to the estate of Mariam Musa Ayoob (deceased);
- c. 25% to Nizarali Gulamhussein Karim Meghji;
- d. 25% to Pyarali Gulamhussein Karim Meghji; and
- e. 25% to Shehiralil Gulamhussein Karim Meghji.

3. The applicant, Nizar Karim, is one of the beneficiaries of the estate. He moved the court vide an application dated 8th March 2016 for orders *inter alia* that the administrators be ordered to furnish the income, expenditure and distribution accounts for the years 2012 to 2015. He avers that since the grant of letters of administration were issued to the administrators on 27th July 2011, they have never availed a detailed statement of account of the income, expenditure and distribution of the estate to the beneficiaries. He is apprehensive that if the orders sought are not granted, the administrators will continue disposing of the estate to the detriment of the beneficiaries.

4. In rejoinder, the 2nd respondent swore an affidavit on 29th May 2018 giving an account of how she and the 1st respondent had distributed the deceased's estate. She averred that the beneficiaries had agreed that LR No. 209/519/1 and LR No. 209/519/2 be sold and the proceeds thereof be distributed among them. After valuation of the properties, the initial attempt to sell the properties had failed. The subsequent attempt was successful and proceeds of the sale were paid out to the beneficiaries after the properties had been transferred.

5. The 2nd respondent explained that Pyarali Karim and Shahir Karim, who had obtained limited letters of administration gave her a statement of accounts of the properties which revealed that they had appropriated a total of Kshs. 4,150,000/= for their own use. These monies were taken out of their share of the sale proceeds of the properties and the rental income from land parcels LR No. 209/519/1 and LR No. 209/519/2 redistributed to the beneficiaries.

6. As for the deceased's shares in Diamond Trust Bank, the 2nd respondent averred that the dividends of Kshs. 120,200.70/= and the proceeds from the sale of the shares of Kshs. 2,474,232.90 had been received and distributed to the beneficiaries. She also averred that she

was still holding a sum of Kshs. 1,000,000/= in respect of fees for the funds held in the UK account.

7. The matter came up for hearing on 6th September 2019 during service week. I heard Mr. Odaga whomade oral submissions in support of the applicant's case while the 2nd respondent, Ms. Janmohammed, made oral submissions in response.

8. Mr. Odaga submitted that following the applicant's application to be supplied with a statement of full accounts, from 2012 to 2015, most of the information had been provided to his satisfaction save for a few issues. One such issue concerned the funds being held in the Natwest Bank account in the UK. Counsel submitted that there was a concession that a sum of Kshs. 1,000,000/= was being held in the account in respect of feesbut that amount did not reflect a full account as there was no explanation of what was left in the account and what steps were being taken to realize and distribute the funds.

9. Concerning the rental income from the two parcels of land, it was submitted that the accounts given by the respondents did not cover the period when limited letters of administration were issued to Pyarali Karim and Shahir Karim for the purpose of collecting, getting in and receiving the assets.Counselargued thatthe statement of accounts provided by the respondents did not reflect details of transactions prior to the year 2012 and from 2013 onwards.

10. On her part, Ms. Janmohammed submitted that the two main properties of the estate being, LR No. 209/519/1 and LR No. 209/519/2 had been sold on the 1st November 2013 therefore the demand for accounts for the year 2015 was a fallacy. She submitted that the applicant had received his share from the proceeds of the saleandit would be absurd to demand for accounts after the sale.

11. Sheexpounded that at the time when the properties had been put on salethere was need to communicate to potential buyers that they would be acquiring vacant possession. There was therefore nothing to account from 2013 onwards. She submitted that she had provided an account of how the rental income from the year 2012 and interest had been disbursed to all the beneficiariesincluding the applicant. As for the monies held at the Natwest bank account, counsel submitted that the distribution was subject to the beneficiaries' agreement and to payment of fees toforeign lawyers. She urged the court to dismiss the application since the accusations made by the applicant had not been substantiated.

12. From the submissions and the parties' averments, the question this court is asked to determine is whether the respondents have furnished a full account of the income, expenditure and distribution of the deceased's estate from the years 2012 to 2015.

13. **Section 83 (h) of the Law of Succession Act** provides that a personal representative is required, "*to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account.*"

14. Starting with the least contested property, being deceased's shares in Diamond Trust Bank Limited; there is no dispute that the proceeds of the sale of the sharesas well as the dividend have been distributed among the beneficiaries. The 2nd respondent has attached to her affidavit an account dated 28th May 2018, detailing the sums received as dividend and proceeds of the sale and how they were distributed among the beneficiaries.

15. It is also not disputed that the administrators were required to sell and distribute the proceeds of land parcelsLR No. 209/519/1 and LR No. 209/519/2among the beneficiaries. Following a valuation of the parcels of land as evidenced by a valuation report dated 7th February, 2012, and marked "ZJ 2," in the 2nd respondent's affidavit,negotiations for the sale of the properties began. A sale agreement dated 1st November 2013 and a statement of account dated 15th May 2018 annexed to the 2nd respondent's affidavit show that the parcels of land were sold and the proceeds thereof distributed to all beneficiaries. There is no claim by the applicant or any of the beneficiaries that the proceeds of the sale of land parcels LR No. 209/519/1 and LR No. 209/519/2 have not been accounted for.

16. The point of divergence between the parties relates to the rental income accrued from land parcels LR No. 209/519/1 and LR No. 209/519/2. Prior to the letters of administration being issued to the respondents, two of the beneficiaries, Pyarali Karim and Shahir Karim had filed Succession Cause No. 1097 of 1992 seeking limited letters of administration *ad colligenda bona* for purposes of collecting, getting in, receiving the estate and preserving the estate. The limited grant was issued to them on 10th September, 1992. The 2nd respondent avers that Pyarali Karim and Shahir Karim supplied her with accounts for the properties from which it emerged that they had used a sum of Kshs. 4,150,000/= for their own benefit. She states that this was taken from their share of the sale proceeds of the properties and redistributed to the rest of the beneficiaries.

17. The 2nd respondent has availed an account of the rental income collected for the year 2012 but did not avail the accounts received from Pyarali Karim and Shahir Karim. The applicant insists that it is the duty of the administrators to account for all assets including those accruing prior to 2012.

18. **Rule 36 of the Probate and Administration Rules** provides the circumstances under which a limited grant of letters of administration *ad colligenda bona* thus;

(1) where, owing to the special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defunct of the estate of the deceased.

(2)Every such grant shall be in Form 47 and be expressly limited for the purpose only of collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the estate and until a further grant is made. [Emphasis added]

19. By misappropriating funds for their own benefit, Pyarali Karim and Shahir Karim acted in contravention of their duty to preserve the estate in accordance with the limited grant issued to them. Such acts amount to intermeddling with the deceased's estate. Under **Section 45(2) (b)** of the **Succession Act** a person who disposes of any free property of the deceased is *answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.*

20. From the wording of the limited grant *ad colligenda bona* issued to Pyarali Karim and Shahir Karim, they undertook to faithfully administer the estate according to the law and until further representation was granted and "*render a true and just account thereof whenever required to by law so to do.*"

21. **Pyarali Karim** and **Shahir Karim** are therefore directed to give a full and accurate inventory of the rental income of the deceased to the administrators from 10th September 1992, which is when the limited grant was issued to 27th July 2011. The same shall be availed to the court by the administrators within 12 months of the date of this ruling.

22. As for the monies held in the Natwest Bank account, the administrators concede that the funds have not been received or disbursed to the beneficiaries. It remains the duty of the administrators to get in all free property of the deceased and distribute it to the estate's rightful beneficiaries. The administrators are therefore directed to commence the process of collecting and distributing the funds held at Natwest Bank, 15 Bishops Gate, London, EC2P 2AF, United Kingdom less the necessary expenses.

23. Any interested party may file an application for a full and accurate account of the completed administration within 12 months hereof.

Dated, signed and delivered at Nairobi this 4th day of October 2019.

R.E.OUGO

JUDGE

In presence of;

Miss Impano h/b Mr. Odaga For the Applicant

Mr. Njuguna h/b Ms Janmohammed For the 1st & 2nd Respondent

Patrick Court/ clerk