



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 1057 OF 2011**  
**IN THE MATTER OF THE ESTATE OF JAYANTILAL**  
**HARIBHAI BAKRANIA (DECEASED)**

AGNES WAITHERA MWANGI.....APPLICANT /ADMINISTRATOR

VERSUS

HARSHA BAKRANIA.....1<sup>ST</sup> RESPONDENT/ADMINISTRATOR

VALLABH DILIP BAKRANIA..... 2<sup>ND</sup> RESPONDENT

**RULING**

1. The deceased Jayantilal Haribhai Bakrania died intestate on 18<sup>th</sup> September 2010. According to the letter by the assistant chief of Uthiru/Ruthimitu location dated 10<sup>th</sup> May 2011, the deceased was survived by the following beneficiaries:-

- a. Harsha Bakrania – wife (1<sup>st</sup> respondent);
- b. Dipesh Bakrania – son;
- c. Nisha J. Bakrania – daughter; and
- d. Chandni J. Bakrania - son

2. On 3<sup>rd</sup> June 2011 the 1<sup>st</sup> respondent petitioned the court for the grant of letters of administration intestate in respect of the estate of the deceased. Before the grant could be issued, the applicant Agnes Waithera Mwangi filed her objection to the petition on 1<sup>st</sup> July 2011 on the grounds that the petition had not disclosed the fact that she was also a wife of the deceased with whom she had four children. Counsel for the applicant and the 1<sup>st</sup> respondent signed a consent dated 29<sup>th</sup> November 2013 which they filed in court on 11<sup>th</sup> December 2013 appointing the two as co-administrators of the estate. A joint grant was issued to the two on 29<sup>th</sup> January 2014. The grant is pending confirmation.

3. On 8<sup>th</sup> April 2014 the 1<sup>st</sup> respondent filed an application seeking orders compelling the 2<sup>nd</sup> respondent Vallabh Dilip Bakrania to file in court the full details of all the assets of the deceased, including the deceased's shareholding in the various named companies to enable the administrators complete the administration of the estate of the deceased. The 2<sup>nd</sup> respondent is the deceased's brother and shareholder in some of the companies. On 16<sup>th</sup> July 2014 the court issued an order allowing the application and directing the 2<sup>nd</sup> respondent to file in court, within 14 days, the details requested by the application. The summary of the deceased's estate was filed in court by the 2<sup>nd</sup> respondent through his supplementary affidavit dated 2<sup>nd</sup> June 2015 and filed in court on 4<sup>th</sup> June 2015.

4. On 9<sup>th</sup> June 2016 the applicant brought the present summons dated 11<sup>th</sup> May 2016 seeking orders compelling the 2<sup>nd</sup> respondent to pay school fees for, and maintain, Ryon Muhia Bakrania, Tanisha Njeri Bakrania and Trina Wanjiku Bakrania. The application was based on the grounds that:

- a. the applicant was the widow of the deceased;

b. the applicant and the deceased were blessed with four issues, namely: Ronnie Mwangi Bakrania, Ryon Muhia Bakrania, Tanisha Njeri Bakrania and Trina Wanjiku Bakrania;

c. the deceased was the sole breadwinner of the applicant and her children;

d. since the death of her husband, the applicant has been struggling to pay school fees for the children and fend for their upkeep as she has no other source of income;

e. the applicant's children risked dropping out of school despite them being beneficiaries to the deceased's vast estate; and

f. the estate was being solely managed by the 2<sup>nd</sup> respondent.

5. The application was supported by the affidavit of the applicant dated 11<sup>th</sup> May 2016. She stated that after the deceased passed away his estate was left under the control and management of the 2<sup>nd</sup> respondent; the 2<sup>nd</sup> respondent had declined to submit the records of the deceased's schedule of assets despite an order of this court issued on 27<sup>th</sup> April 2015, hence rendering it difficult to proceed with the distribution of the deceased's estate among the beneficiaries; that the 2<sup>nd</sup> respondent had neglected to maintain her family despite them having been fully reliant on the deceased during his lifetime; that she was not employed and only relied on her small business, family members and friends for support in feeding and educating the children but was now unable to raise their school fees; and that unless the court intervened her children were likely to miss out on education which is their basic right.

6. The application was opposed by the 1<sup>st</sup> respondent through her affidavit dated 4<sup>th</sup> August 2016. She stated that the applicant was not a widow of the deceased since she had never proved that she was married to the deceased under any law, and neither had she proved that the deceased was the father of her children. She further stated that until the beneficiaries of the estate were determined, it would be premature to order any payments out of the estate for the benefit of the applicant's children.

7. The application was also opposed by the 2<sup>nd</sup> respondent. His case was that all the accounts of the deceased were held by the 1<sup>st</sup> respondent who was a co-administrator to the estate; and that he was not co-administrator to the estate and therefore was under no legal obligation to provide for either the applicant or her children. Further, he stated that the fact that he and the deceased were shareholders in the named companies did not make him responsible to the estate or its beneficiaries in the manner proposed by the applicant; that, in any case, he and the companies were separate legal entities. The obligations of the companies, if at all they had any obligation, did not attach to him. Lastly, he stated that the status of the applicant and those of her children had not been determined, as pleaded by the 1<sup>st</sup> respondent.

8. Counsel for the parties filed written submissions which I have considered.

9. It is not in dispute that the 2<sup>nd</sup> respondent is not the administrator of the estate of the deceased. Under **sections 79, 82 and 83 of the Law of Succession Act (Cap 160)** it is only the administrator of the estate who can make any payments out of the estate to any beneficiary, or make any other payments that are necessary and are obtaining to the grant of the letters of administration. In other words, the 2<sup>nd</sup> respondent lacks legal capacity to make the payments that the applicant seeks in her application (**Re. Estate of Nduba Thande (Deceased) [2013]eKLR**).

10. Secondly, the 2<sup>nd</sup> respondent and other people were, together with the deceased, the shareholders of various companies (including Meltex International Ltd, Timco Chemical Industries Ltd and Tomwood Products Ltd). The companies are each a separate legal entity from the 2<sup>nd</sup> respondent (**Salomon -v- Salomon & Co. Ltd [1897]Ac 22**), and therefore he cannot be asked to draw monies from the accounts of the companies to pay the applicant or her children.

11. Lastly, the issue whether the applicant and her children were the widow and children, respectively, of the deceased has yet to be determined. The applicant stated that the deceased, while alive, maintained her and her children, and that they were therefore dependants in terms of **section 29 of the Act**. The respondents claim that the applicant was not the widow of the deceased, and her children were not the children of the deceased. The status of the applicant and the children is therefore a contentious issue that will be resolved at the time it is sought that the estate be confirmed.

12. In short, the applicant's application cannot be allowed. It is dismissed. The issue of costs, however, will abide the cause.

13. I note with concern that these joint grant herein was issued on 29<sup>th</sup> January 2014. Since then the same has not been confirmed. So that the substance of this old dispute can be confronted and determined, I direct that the applicant and the 1<sup>st</sup> respondent shall each, within 30 days from today, file and serve application for confirmation together with sworn affidavits indicating who the beneficiaries of the deceased's estate are, the extent of the deceased's estate and a proposal on how the estate should be distributed. Each side shall, upon service, respond within 14 days. The matter shall be mentioned on **26<sup>th</sup> November 2018** for further directions on hearing.

**DATED and DELIVERED at NAIROBI this 2<sup>ND</sup> day of OCTOBER 2018.**

**A.O. MUCHELULE**

**JUDGE**