



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1321 OF 2003

IN THE MATTER OF THE ESTATE OF VIJAYKUMAR DHARAMSHI DHANANI (DECEASED)

PARYANTRAY DHARAMSHI DHANANI.....APPLICANT

VERSUS

RAVI DHANANIRESPONDENT

RULING

1. The deceased Vijaykumar Dharamshi Dhanani died intestate on 11th December 2002. A grant of letters of administration was issued to the respondent Ravi Dhanani (the deceased's son) and the applicant Paryantray Dharamshi Dhanani (the deceased's brother) on 23rd July 2003. The grant was confirmed by the court through the ruling delivered on 13th July 2017. In the ruling, the court listed the assets comprising of the estate of the deceased to include Kajiado/Ntastart/2178-2205, Kajiado/Kitengela/2645 (1/2 share), and L.R No. 1870/1/305 Upper Parklands. The assets were to be equally shared among the three beneficiaries/children of the deceased Sonal Dhanani, the respondent Ravi Dhanani and Rishi Dhanani.

2. On 30th November 2017 the applicant brought the present summons dated 16th November 2017 seeking rectification of the confirmed grant to have Kajiado/Ntastart/2178-2205 (1/2 share), Kajiado/Kitengela/2645 and L.R No. 1870/1/305 Upper Parklands shared equally among Sonal Dhanani, Ravi Dhanani and Rishi Dhanani while the funds held in account No. 1010680721 Standard Chartered Bank Jersey Branch be allocated to himself absolutely.

3. The application was supported by the affidavit of the applicant dated 16th November 2017 and a supplementary affidavit dated 7th June 2018. It was his case that the court in the rulings dated 28th December 2012, 20th March 2015 and 23rd September 2016 found that the funds held in Account No. 1010680721, Standard Chartered Bank, Jersey Branch in the name of the deceased belonged to Magibai Dharamshi Punja Shah (deceased) (the applicant's mother) in respect of whom the grant of probate of written Will was granted to the applicant and thus the applicant was entitled to the funds; that the account number 1010680721 in which the funds are held is in the name of the deceased herein Vijaykumar Dharamshi Dhanani; that the said account was left out erroneously from the certificate of confirmation of grant hence the need to rectify the confirmed grant; and that he did not claim any part of the properties listed in the confirmed grant dated 13th July 2017.

4. The application was opposed by the respondent through his affidavit dated 19th December 2017. He stated that the court had already held in various rulings dated 28th December 2012, 20th March 2015, 23rd September 2016 and 13th July 2017 that the funds held in Standard Chartered Bank, Jersey Branch did not form part of the estate of the deceased; that none of the parties had filed an appeal against the said rulings; that the issue regarding the said account was settled and therefore the present application was *res-judicata*; and that, in any event, the applicant being a brother of the deceased was not a beneficiary of the estate of the deceased.

5. Parties filed their submissions which I have considered.

6. It was not contested that funds held in Standard Chartered Bank, Jersey Branch belong to the applicant's mother Magibai Dharamshi Puuja Shah (deceased) and that her estate was being administered by the applicant. The funds do not form part of the estate of the deceased. I note the finding in the ruling of 13th July 2017 in which the court observed that:

“The late Magibai Dharamshi Puuja Shah is deceased and has no future needs. It is also important to note that this court had found that money held in Bank Account No. 1010680721 held in Standard Chartered Bank to belong to her and as such she leaves behind a considerable estate being administered by her son Paryntray Dharamshi Dhanani as such I find that

Paryntray Dharamshi Dhanani is not entitled to any share in the late Vijaykumar Dharamshi Dhanani's estate.”

7. The applicant has no claim over land parcels Kajiado/Ntastart/2178-2205 (1/2 share), Kajiado/Kitengela/2645 and L.R No. 1870/1/305 Upper Parklands which the court has held that shall be shared equally among the three children of the deceased who include the respondent. The money held in account number 1010680721 at Standard Chartered Bank, Jersey Branch belonged to the applicant's mother whose estate he (the applicant) is administering following a Will. However, the account was in the name of the deceased Vijaykumar Dharamshi Dhanani whose children have no claim over the funds therein. I find that, for the applicant to access the funds he had to make the present application to have the certificate of confirmation to reflect him.

8. Those are the reasons why I allow the application. I order the rectification of the certification of confirmation, so that:-

a. parcels numbers Kajiado/Ntastart/2178-2205, Kajiado/ Kitengela/2645 (1/2 share), and L.R No. 1870/1/305 Upper Parklands shall be shared equally among Sonal Dhanani, Ravi Dhanani and Rishi Dhanani; and

b. the proceeds of account number 1010860721 at Standard Chartered Bank, Jersey Branch shall go to the applicant Paryntray Dharamshi Dhanani for the benefit of the estate of the deceased Magibai Dharamshi Punja Shah.

9. In the circumstances of this case, I ask that each party shall bear own costs of the application.

DATED and DELIVERED on the 2ND day of OCTOBER 2018

A.O. MUCHELULE

JUDGE