



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1346 OF 2016**

**SAILESH MAGANLAL PANCHMATIA ..... 1<sup>ST</sup> APPLICANT**

**RAMILA RAJENDRA PANCHMATIA ..... 2<sup>ND</sup> APPLICANT**

**-VERSUS-**

**JAY PRAKASH PANCHMATIA ..... 1<sup>ST</sup> RESPONDENT**

**PRAFUL BACHULAL PANCHMATIA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. At the centre of the 'controversy' before court is a Will said to have been left behind by **Dayakuvar Maganilal Panchmatia** who died domiciled in England on the 24<sup>th</sup> of July, 2001.
2. In the said will she appointed her sons **Sailesh Maganlal Panchmatia (Sailesh) & Rajendra Maganilal Panchmatia (Rajendra)** as the executors and trustees of the Will.
3. The sole beneficiary of the Will is **Ramilal Rajendra Panchmatia (Ramilal)** the deceased daughter-in-law and wife to **Rajendra**.
4. Grant of Probate was issued to **Sailesh** on the 2<sup>nd</sup> of December 2005, it is said that **Ramesh** declined executorship due to his wife's interest as the sole beneficiary of the deceased estate.
5. The said will was resealed by this court on the 11<sup>th</sup> of November 2016 upon an application by **Sailesh**.
6. On the 16<sup>th</sup> of August 2018 **Sailesh** and **Ramila** moved this court under certificate of urgency as against **Jay Prakash Panchmatia (Jay)** and **Praful Bachulal Panchmatia (Praful)** seeking various orders as follows:

1. ....

2. **The honourable court be pleased to grant interim orders of injunction.**

3. **The honourable court do order the Respondents to release 25% of the rental income including interest at normal bank rates collected from parcel known as NAKURU PLOT 9/78 from 1<sup>st</sup> July 2017 to date to the Applicants;**

4. **That a mandatory injunction directed at the Respondents mandating them to remit 25% of the rental income and or proceeds collected from land parcel known as NAKURU PLOT 9/78 due to the Late Dayakuvar Maganilal Panchmatia to the 1<sup>st</sup> Applicant herein as the Executor of the will of the deceased.**

5. **That an interim order of injunction restraining the Respondents either by themselves, their agents, servants, employees or any person acting through them from in any way utilizing the proceeds or and intermeddling with part of the property belonging to the estate of the deceased and in particular 25% of the rental and any other proceeds of NAKURU PLOT 9/78.**

6. **That an order of mandatory injunction to the Respondents be issued directing them to supply the Applicants with full statements of accounts and copies of bank statements in regard to the rental income and proceeds of the land parcel known**

as NAKURU PLOT 9/78 from 1<sup>st</sup> April, 2016 to date.

**7. That the Respondents be ordered to release 25% rental income proceeds held by them devolving to the Estate of the deceased and provide the Applicant with complete accounts and bank statements regarding the Estate's share of 25%.**

**8. That costs of the application be borne by the Respondent.**

7. The grounds upon which the application was predicated were as follows; the estate owned 25% share of Nakuru Block 9/78 ('the property'); the deceased left a valid will appointing the 1<sup>st</sup> applicant as one of the executor and the 2<sup>nd</sup> as the sole beneficiary and upon the death of the deceased, the mother to 1<sup>st</sup> Applicant, and the respondents, the respondents have remitted 25% of the proceeds of rent from the property to the executor of the will for onward transmission to the beneficiary which seized since 1<sup>st</sup> of April 2017; the 2<sup>nd</sup> applicant is now in dire need of the funds to enable her attend to her husband's medical need urgently.

8. In the affidavit in support of the application sworn by **Sailesh** on the 16<sup>th</sup> of August 2018 on his behalf and that of the 2<sup>nd</sup> Applicant, he reiterates the grounds mentioned above and states further that remittances were diligently made since the demise of the deceased but abruptly stopped since 1<sup>st</sup> of July, 2017, and that requests for the funds, accounts and copies for financial statement have been in vain. Further that his brother **Ramesh** requires as a matter of urgency 40,000 Pounds Sterling for his urgent medical needs and if funds now being withheld are released the same would be sufficient to cover the medical costs. Several annexures including report from Vale of the Red Horse Health Care Centres were included as proof of the medical need.

9. The 1<sup>st</sup> Respondent objected to the application vide a replying affidavit. In brief the response is to the effect that, indeed the deceased owned 25% of the property whereas the 1<sup>st</sup> Respondent owns 25% and the 2<sup>nd</sup> respondent 50%. That on January 2017 together with his other siblings they got to learn of the alleged Will as the applicants had not informed them of the same or of the probate filed in England nor the resealing in Kenya. Further he contended that they do not believe their mother would have left her property to the 2<sup>nd</sup> applicant to the exclusion of her 6 children and 12 grandchildren as the will portrayed and that they intend to contest the will for failure to make reasonable provision for the other children and/or dependants. He complained that his 25% share of rent from the Nakuru Property was equally being withheld by the 2<sup>nd</sup> respondent, he also blamed him failure to account. He also doubted whether **Ramesh** was indeed sick and deemed the medical letter annexed to the application to be a forgery. He opposed released of funds as sought for by the applicants.

10. The counsel for the 2<sup>nd</sup> Respondent indicated that his client had not responded to the application as he was not a beneficiary of the Estate. Simply put there was no opposition from the 2<sup>nd</sup> Respondent.

11. Having considered the application, supporting affidavit, the affidavit in reply and submissions by counsel the issues before court are;

**i. Whether or not to order the Respondents to release 25% of the rental income collected from the Nakuru property from 1<sup>st</sup> July 2017 with interest.**

**ii. Whether to restrict the Respondents by themselves, their agent, servants or employees from utilizing or interfering with 25% income form the Nakuru property which belongs to the Estate.**

**iii. Whether to order the Respondents to supply full statement and accounts of the rental income of the Nakuru property.**

12. The deceased died on the 24<sup>th</sup> of July, 2001, probate issued on 2<sup>nd</sup> December, 2005, and the grant resealed in Kenya on 11<sup>th</sup> November 2016. From the record so far, the Will remains unchallenged and the question in the court's mind is whether there would be any justification to deny the beneficiary of the estate her entitlement.

13. Even if the process of obtaining probate and resealing of the grant was unknown prior, no action has been taken since the respondent and the other beneficiaries learnt of the Will and steps undertaken by the applicants. Therefore, for now, in my considered opinion, there would be no basis for the 25% to be withheld from the beneficiary. Secondly neither the court nor the Applicant have any reason to Police the usage or application of the funds due to the 2<sup>nd</sup> applicant and I will not delve on whether Ramesh is sick or not or whether documents in support of the illness are a forgery or not. The 2<sup>nd</sup> applicant is at liberty to enjoy her entitlement.

14. Consequently I direct and order as follows:

**a) 25% of the rental income from the Nakuru property due to the estate from the 1<sup>st</sup> of July 2017 be released to 2<sup>nd</sup> Applicant forthwith and continue to be released unless further orders to the contrary are issued by a competent court.**

**b) Any amount that is due and has been deposited in court be released to the 2<sup>nd</sup> Applicant forthwith.**

**c) The Respondents, their agents, servants and employees are restrained from utilising and/or intermeddling with the 25% of the income being monies payable to the 2<sup>nd</sup> Respondent other than remitting the said funds to her until further orders of the court.**

**d) The Respondents do render accounts of the entire rent for the Nakuru property, bank statements and any other relevant information to the Applicants herein within 30 days.**

15. Costs to the Applicants in any event.

**DATED, SIGNED and DELIVERED at NAIROBI this 11<sup>th</sup> DAY OF October 2018.**

.....

**ALI-ARONI**

**JUDGE**