



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION MILIMANI LAW COURTS
SUCCESSION CAUSE 393 of 2016
IN THE MATTER OF THE ESTATE OF REHMAT ALI SHEIKH
AND
SUCCESSION CAUSE 394 of 2016
IN THE MATTER OF THE ESTATE OF ABDUL RASHID SHEIKH
R U L I N G

1. The Court has before it two Summons for Confirmation relating to the Estates of family members which potentially overlap as to the individual assets that comprise the Estate. In the circumstances, the Court has taken the decision to deal with both together to avoid confusion by duplication.

2. The first application is in **Succession Cause 393 of 2016** relating to the Estate of Rehmat Ali Sheikh. It seeks rectification of the grant to contain the correct name of the deceased and property registration number. The Deceased was also known as Rehmat Ali. The property that comprises the Estate is the property known as LR No 209/3605/NAIROBI, IR No 9333 situated at South B.

3. The Deceased Rehmat Ali Sheik passed away on 27th February 1984. According to the Letters of Administration issued on 16th June 2016 he was domiciled in the United Kingdom in Leicester. The Petition was filed by Salamat Bibi Sheikh. The Petition states that she is the Granddaughter of the deceased and “Every person having equal or prior right to present the petition has either consented or renounced their own right. The Affidavit in Support of the Petition informs the Court that the deceased died intestate and left the following surviving him

- (a) Salamat Bibi Sheikh – Granddaughter
- (b) Mohamed Akram Sheik – Grandson
- (c) Farah Naseen Sheikh

The second two potential beneficiaries are the husband and daughter of the Applicant.

The asset is listed as LR No 209/3605/Nairobi South B (Share)

4. According to the Letter from the Chief of the Area the Deceased’s family was not as small as suggested in the Petition. It refers to Rehmat Ali Sheikh, Noor Mohamed Sheikh, Abdul Rashid Sheikh

and Hussein Bibi all of whom are deceased. For the second two, The date of their deaths is not recorded. The Letter goes on to say that “The family relocated on a permanent basis to Britain and became British Citizens. The death of the said persons is duly confirmed by the attached copies of certified death certificates. Rehmat Ali Sheik was the father of all the other three deceased persons named above. It lists that the three named person in the Petition form the surviving family and they are Kenyan Citizens. Therefore from the information before the Court it seems that Rehmat Ali Sheikh was the owner of the Property. He had three Children, Noor Mohammed, Abdul Rashid and Hussein Bibi. They in turn had children, two of whom Salamat Bibi and Mohamed Akram are married and had a Child Farah Naseen Sheikh. It therefore cannot be said that the named persons are the only survivors. That statement may be untrue. In fact, the Death Certificate from Leistershire states that the informant was on Mohamed Arshad Sheikh a grandson of the deceased. That person would then rank in equal priority to the Administratrix and her Husband.

5. The Administratrix informed the Court that she and her family live in the property and no other family member lives there. They emigrated to the United Kingdom in 1972 There is no evidence before the Court that the other family members who may or may not have moved to the United Kingdom have renounced their claim to a share in the property and/or a right to occupy it. Such evidence would be essential for the type of grant being prayed for.

6. Moving onto the Second File Succession Cause 394 of 2016. That is said to relate to the Estate of Abdul Rashid Sheikh . According to the Petition he passed away on 21st October 1985. The Petitioner was the same Salamat Bibi Sheikh. That suggests that Abdul Rashid Sheikh was alive when Rehmat Ali Sheikh passed away in 1984. That suggests he had a vested interest in the property and his share must be recognised in any disposition. Unfortunately, notwithstanding that the Petition was prepared by Advocates the picture presented is very far from complete. Abdul Rashid also lived in Leicester. The same property is listed as his assets. The Letters of Administration were issued on 15th June 2016.

7. The File also contains the Letters of Administration issued on 16th June 2016 for Noor Mohamed Sheikh who passed away also in Leicester on 16th December 1995. Again the named Administratrix is Salamat Bibi Sheikh. In addition, the file contains the Letters of Adminsitration for the Estate of Hussein Bibi Sheikh granted on 16th June 2016. She passed away on 2nd September 2008. It is therefore clear that the Children of Rehmat Ali Sheikh had a vested interest and thereafter their own families did.

8. The fact that the whole extended family are not in complete agreement is demonstrated by the fact that a Khalid Javed Sheikh the soon of Noor Mohamed Sheikh has caused a caveat to be placed on the property on 24th June 2009, that is before the Petition in any of these matters. Had the death certificate at **Exhibit SBS 2** been legible, it may have been possible to discern of which of the siblings Khalid Javed Sheikh was the son of, and whether he had any dependants.

9. In ***Succession Cause No 394 of 2016***, the Advocates for the Administrator have filed a “Summons for Confirmation” where they are seeking orders that:

1. Consolidation of all four files
2. Letters of Administration be confirmed notwithstanding that 6 months not passed since gazettment
3. That caveat in favour of Khalid Javed Sheikh be removed forthwith
4. That the costs of the application be borne out of the deceased’s Estate

10. Notwithstanding the existence of the caveat, the Application presumes to state that there are no other known dependants of the deceased’s Estate under ***Section 29 of the Succession Act***. It is difficult to see how that statement can be anything other than a deliberate intention to mislead the Court by the Advocates. The Administratrix in Court gave the Court a different version of a large extended family

who had moved abroad and lost interest in the property.

11. The Copy of title exhibited as **Exhibit SBS 3** demonstrates that the joint owners of the property were, Rehmat Ali, Noor Mohamed, Abdul Rashid and Hussein Bibi (Wife of Faiz Mohamed). The title does not say whether they held the property as joint tenants or tenants in common. For the present, it is assumed that they were tenants in common living in an “extended family” arrangement with each part having its entitlement.

12. The Affidavit is also drafted to say that the Applicant is “permanently disabled and bedridden”. Her attendance in Court demonstrates that statement is not completely true. She attended Court and explained the facts clearly and coherently. Each of the original owners have passed away. Each was survived by their respective heirs. There is therefore a presumption that the heirs applied for grant of letters of administration of their shares. If they did so in England that grant would have applied to all the other property of that deceased. That suggests at least $\frac{3}{4}$ of the Property listed in the Estate is the subject of another grant that predates this one. In those circumstances, the Petition and this Application would be an abuse of process.

13. In the circumstances of this case, in particular the fact that there are other members of the family who have a valid claim to the Estate, no grant can or should have been confirmed without notice to them and their express release of their shares. In the alternative, the only way the Applicant could hold the property would be as ONE of the trustees for the family and its members. The matter requires further inquiry before it is finally resolved.

14. The Court therefore makes the following Order:

- (1) Each of the Letters of Administration and Petitions in P&A 392, 393, 394 and 395 to be served on the heirs of the respective siblings, children of Rehmat Ali Sheikh,
- (2) Files in P&A 392, 393, 394 and 395 to be dealt with together and placed before this Court
- (3) List for further directions in 3 months, Applicant to take a date at the Registry
- (4) All dealings in the Property are prohibited.
- (5) No costs will be paid out of the Estate. The fee for the Application for confirmation shall be discounted on taxation by reason of material mis-statement.
- (6) Applicant to file a search from the Probate Registry in Leicester, England to so that there has been no grant in respect of the estate of each of the owners named in the Title Deed.

It is so Ordered,

FARAH S.M. AMIN

JUDGE

Delivered, Dated and Signed in Nairobi on this the 15th day of June 2017

In the Presence of:

Court Assistant: Patrick Mwangi

Applicants: Mr Mambiri Holding Brief for Salamat Bibi who was also in Court