



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1321 OF 2003

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

SAROJ RAJNIKANT DHANANI.....APPLICANT

PARYANTRAY DHARAMSHI DHANANI.....RESPONDENT

RULING

1. The parties recorded consent with the applicant withdrawing application dated 28/8/2016. This in essence also led to the collapse of the Preliminary objection raised as the same was based on the said application.

2. The application coming for determination is dated 25/7/2014 which is summons for confirmation of grant. Parties recorded a consent that the same be dispensed with via affidavits. The court on 23rd June 2014 revoked the rectified confirmed grant issued on 8th March 2011 and parties were ordered to meet and agree on what formed the deceased's estate and mode of distribution.

3. Paryntray Dharamshi Dhanani a brother to the deceased and a co-administrator to the deceased's estate lists the following properties as the ones forming the deceased's estate ;

- i. Kajiado/Ntshart/2178-2205
- ii. Kajiado/Kitengela/2645
- iii. L.R. 1870/1/305- Upper Parklands

4. Funds held in Bank account No. [particulars withheld] , Standard Chartered Bank, Jersey Branch were held to belong to Magibai Dharamshi Puuja Shah (deceased) who was held to be a dependant of the deceased by Justice Gacheche in her Ruling dated 28th December 2008 and reiterate by this court in its ruling dated 20th March 2015. He added that he had since taken out a grant for Magibai's estate hence entitled to a share she would have received. In his affidavit for mode of distribution dated 10th October 2016 Paryantray Dharamshi Dhanani proposed the said properties

- a. Kajiado/Ntshart/2178-2205(1/2 share)
- b. Kajiado/Kitengela/2645
- c. L.R. 1870/1/305- upper Parklands

to be distributed equally to Paryantray Dharamshi Dhanani, Ravi Dhanani, Sonal Dhanani and Rishi

Dhanani.

6. Sonal Dhanani in her affidavit dated 4th September 2014 lists the following as the assets of the deceased.

- a. Bank Account No. [particulars withheld] held in Standard Chartered Bank
- b. Kajiado/Ntashart/2178-2205(1/2 share)
- c. Kajiado/Kitengela/2645
- d. L.R. 1870/1/305- upper Parklands

with three (3) beneficiaries to the deceased's estate namely Sonal Dhanani, Ravi Dhanani and Rishi Dhanani. It is important to note that this court had since settled the issue of the account Bank Account No. [particulars withheld] held in Standard Chartered Bank to belong to the late Magibai Dharamshi Puuja Shah and as such the same is not available for distribution in the deceased's estate. This leaves only three properties namely;

- b. Kajiado/Ntastart/2178-2205(1/2 share)
- c. Kajiado/Kitengela/2645
- d. L.R. 1870/1/305- upper Parklands for distribution between the beneficiaries of the deceased.

7. Magibai Dharamshi Puuja Shah had via the ruling dated 28th December 2008 had been declared a dependant of the deceased however she is since deceased. Sonal Dhanani proposes that each of the sibling to receive an equal 1/3 of the deceased's estate.

8. In cases of dependency the court only provides reasonable provision for the party if proved she was a dependant but the same is not necessarily entitled to an equal share of the deceased's estate as the rest of the beneficiaries of the deceased. Under Section 26 of the Law of Succession Act to make reasonable provision for the dependant. *It provides that, "for dependants not adequately provided for by will or on Intestacy Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased's estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate."*

In exercise of its discretion, Section 28 provides that the court should have regard to -

- “(a) the nature and amount of the deceased's property;*
- (b) any past, present or future capital or income from any source of the dependant; the existing and future means and needs of the dependant;*
- (d) whether the deceased had made any advancement or other gift to the dependant during his lifetime;*
- (e) the conduct of the dependant in relation to the deceased;*
- (f) the situation and circumstances of the deceased's other dependants and the beneficiaries under any will;*

(g) the general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant."

According to the affidavit of Paryntray Dharamshi Dhanani, Magibai Dharamshi Puuja Shah is deceased. In consideration of Section 28 (b) on any past, present or future capital or income from any source of the dependant; the existing and future means and needs of the dependant (emphasis mine). 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. [particulars withheld] held in Standard Chartered Bank to belong to her and as such she leaves behind a considerable estate being administered by the 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.

The assets forming the deceased's estate namely

- i. Kajiado/Ntastart/2178-2205(1/2 share)
- ii. Kajiado/Kitengela/2645
- iii. L.R. 1870/1/305 - upper Parklands

shall be distributed equally among the 3 children of the deceased namely;

- i. Sonal Dhanani,
- ii. Ravi Dhanani
- iii. Rishi Dhanani

who are the bonafide beneficiaries of the deceased's estate. Cost in the cause. It is so ordered.

Dated, signed and delivered this **13th** day of **July**, 2017.

R. E. OUGO

JUDGE

In the presence of;

Mr. Muigai for the Co. Administrator Ravi Dhanani

Mr. Mutinda holding brief for Mr. Mbindyo the Co. Administrator Paryantray Dharamshi Dhanani.

MS. Charity

Court Clerk