



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2063 OF 2011

IN THE MATTER OF THE ESTATE OF KASHMIRA SINGH JANDU (DECEASED)

JUDGMENT

1. This matter relates to the estate of Kashmiria Singh Jandu who died on 8th September 2011.
2. Representation to his estate was sought by Amarjeet Singh Jandu by a petition dated 19th September 2011, filed in court on 21st September 2011. According to the petition the deceased had died testate having made a valid will on 13th October 2010 which had named the petitioner as executor thereof.
3. The said will disposed of three categories of assets – being LR No. 209/2079 situated at Parklands Nairobi and 1/3 of LR No. 37/396 situated at Industrial Area, Nairobi and all the property situated at Punjab, India. All these assets were devised to the deceased's youngest son, Amarjeet Singh Jandu and in event the said son did not survive the deceased for a period of thirty (30) days after the deceased's death, the property was to devolve upon the grandsons of the deceased, named in the will. It was provided that the deceased's only daughter, Amarjeet Kaur Chana, was to receive rental income from one unit, comprising of three flats, in the Parkland's property.
4. The will did not devise any property to the eldest son of the deceased, Trilochan Singh Jandu. It was stated in the testament that the latter had been adequately provided for during the deceased's lifetime. It was said in particular that he had been given a property known as 28 Browning Way TW9 London, United Kingdom, \$100,000.00 and shares in Kolaba Enterprises Ltd which owned LR No. 209/9273.
5. The affidavit in support of the petition was sworn on 19th September 2011 by the petitioner. It states that the deceased was survived by the children referred to in paragraphs 3 and 4 here above – Trilochan Singh Jandu, Amarjeet Singh Jandu and Amarjeet Kaur Jandu. The assets named as comprising the estate available for disposal in the cause included LR No. 209/2079, LR No. 37/396 and money lying in a bank account with Prime Bank Ltd.
6. An objection to the petition was filed by Trilochan Singh Jandu. On 25th February 2013, Kimaru J. directed that the only matter to be determined by the court with respect to the objection was whether the objector, Trilochan Singh Jandu, was entitled to inherit the remainder of the properties that comprise the estate of the deceased.
7. The hearing commenced on 3rd September 2014, with the objector taking the stand. He stated that he joined the deceased in business after he completed his education. They set up the Jandu Steel Works Limited in 1976. He asserted that he did most of the work in the workshop. He claimed he held 50% shares in the company, while his father held the rest, which he later transferred to his brother, Amerjeet

Singh Jandu. The said brother, the petitioner herein joined the company in 1977 but he was not active in the business. It was allegedly agreed in 2002 that the business be shared out between the deceased, the objector and the petitioner. At the time the objector had already moved to the United Kingdom. The agreement, according to the objector, was that his brother would take the Jandu Steel Works Ltd while he would take the Kolaba Enterprises Ltd.

8. He stated that he and his father bought a business called Kolaba Enterprises Limited as a going concern, including a piece of land it owned. He and his parents were the sole shareholders and directors of the company. After acquiring the company, they put up six go downs on the land owned by the company. The money for the development was allegedly raised from Jandu Steel Works Ltd.

9. He stated further that the other asset of the estate was the Parklands property. He stated that the property was developed in 1991 with funds raised from Jandu Steel Works Ltd. The land was in the name of the deceased. He averred that his father had not said that he should not get a share of the Parklands property, asserting that the deceased had not made it a condition that he should transfer some go downs to his brother in exchange for a share in the Parklands property.

10. On the property along Sotik Road, LR No. 37/396, he said that the same was owned by him, the deceased and the petitioner in certain proportions. He stated that the property had been given to his brother and he had no claim to it at all.

11. He asserted that their father did not buy for him the house that his family resides in in London. He stated that he bought it mortgage with his wife. He argued that their sister's London house had been acquired partially with funds from the family business in Nairobi.

12. It was his evidence that his brother resigned from the businesses and set up his own. He asserted that the estate should be shared equally between him, his brother and sister. He asserted that the businesses were shared out by the deceased and the petitioner at a time when the objector was in London, and he was not privy to the decision.

13. On his part, the first petitioner testified that all the three assets making up the estate – the property on Sotik Road, the Parklands property and the one off Enterprise Road in the name of Kolaba Enterprises Ltd – were all acquired by the deceased. He set up all the family businesses and allotted shares to the parties now before court, being his children. The two, the children, contributed nothing to the acquisition of the assets and the setting up of the businesses for they were minors in school at the time. He stated that the objector was not actively involved in the businesses for he spent quite a bit of time abroad, on further studies, which he did not even complete, and upon emigration to England with his family. He asserted further that a property was bought for the objector and his family in London with funds from the Kenyan businesses. He argued that after emigration to England the objector did not work for a while, and when he eventually got a job it was that of driving a municipal bus.

14. He stated that there was a draft agreement on the division of the business as between the deceased and his two children, but it fell through after the objector declined to sign it. According to the draft, the objector was to take the Enterprise Road property, with the petitioner keeping the Sotik Road property and Jandu Steel Works Ltd. Eventually, the objector was given the Kolaba Enterprises Ltd, but continued to claim the Parklands property, which the deceased wanted shared equally between his three children – the two sons and one daughter.

15. The petitioner's case was that the objector already had a lion's share of the estate. He holds the Enterprise Road property which is valued at Kshs. 170, 000, 000.00. He put the combined value of the remaining assets at Kshs. 165, 000, 000.00 and asserts that it would be unfair for the same to be shared equally between the three survivors of the deceased. He argued that even going by the valuations done at the objector's behest, it would still work injustice if he were to take a share in the Sotik Road and Parklands properties.

16. From the material that is before me, I am satisfied that the objector was allotted what the parties

describe variously as the Enterprise Road property or Kolaba Enterprises Ltd. The assets that remain unallotted are referred to as the Sotik Road property and the Parklands property. The issue is whether the objector should be entitled to a share in the remaining two or whether the two should exclusively be distributed between the petitioner and their sister.

17. I have noted from the record that the objector owns a property in London. He asserts that he acquired it from his own resources, while the opposition says that it was acquired using family funds. It would appear that the objector did not really have any funds of his own which would have facilitated such an acquisition. I am persuaded that he could only have acquired the property with the support of his father, the deceased. I have also noted from the valuations put on record by both sides that the value of the Enterprise Road asset is fairly substantial in comparison with the other two assets.

18. It would appear to me that the objector has benefitted from a substantial *inter vivos* allotment of assets, while the other two survivors did not equally so benefit. It would be unfair and inequitable for the objector to share the remaining assets equally with them. I am persuaded that the said assets ought to be shared by the two to the exclusion of the objector.

19. In view of the above, the orders that I feel compelled in the circumstances to make are as follows: -

(a) That the objection by the objector is hereby dismissed;

(b) That Amarjeet Singh Jandu is hereby appointed administrator of the estate of the deceased, and a grant of letters of administration intestate shall accordingly issue to him;

(c) That the administrator shall move forthwith to apply for confirmation of the grant to distribute the remaining assets of the estate as between himself and Amarjeet Kaur Jandu; and

(d) That each party shall bear their own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 7TH DAY OF APRIL, 2016.

W MUSYOKA

JUDGE