

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2340 OF 2012

IN THE MATTER OF THE ESTATE OF AMAR KAUR MATHARU – (DECEASED)

TARLOCHAN SINGH MATHARU.....APPLICANT

VERSUS

SURINDER KAUR DEVGUN.....RESPONDENT

RULING

1. In the summons for confirmation of the grant of letters of administration intestate issued to the respondent, Surinder Kaur Devgun she has in the supporting affidavit shown the properties of the estate of the deceased Amar Kaur Matharu to include monies in twenty two (22) accounts in various banks and institutions. Some of the banks and institutions are local and others are foreign. The summons has not been heard. In the present application dated 24th February 2016, the applicant Tarlochan Singh Matharu has asked the court to issue an order to the 22 banks and institutions to avail certified copies of the statements of accounts, and that the cost of obtaining the statements be borne by the estate. Previous to this, the same applicant in an application dated 25th September 2015 sought that the respondent procure the personal attendance in court of all the beneficiaries of the estate of the deceased during the hearing of the application or the confirmation of the grant. Secondly, he asked that the respondent gets certified copies of all the titles and bank statements forming the estate of the deceased. The court asked that both these applications be heard together.

2. It is clear that, in case of intestacy, **section 71 of the Law of Succession Act (Cap 160)** provides that the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares. It is also clear that during the hearing of the application for the confirmation of the grant, at which the estate is being distributed, all the beneficiaries have to provide their consent to the mode of distribution. If they have not provided their consent they have to be present, or at least, served with the hearing notice. The applicant is asking that the respondent should procure the attendance of all the beneficiaries in the Cause. Some of them live in the UK. The law is that that the respondent can get them to consent to the mode of distribution that he proposes. In that case, they do not have to attend. What is important is for the respondent to serve each beneficiary with a hearing notice. There is no complaint that the beneficiaries have not been each served with the application for the confirmation of grant.

3. Regarding the issue of the certified copies of statements of accounts in the banks and financial institutions, it is true that at the time of the distribution of the estate of the deceased the respondent will have to show how much money is in each account to be able to propose how much of such monies will go to each beneficiary. The respondent appears to be saying that such information is not forthcoming from the institutions. The applicant is a beneficiary of the estate and it would be in his interest, and in the interest of the estate, that such information be available at confirmation.

4. I note that these issues were not the issues in the application for the revocation of the grant to the respondent whose ruling this court delivered on 28th April 2015. The applications dated 25th September 2015 and 24th February 2016 by the applicant are therefore not *res judicata*. The preliminary objection dated 21st October 2015 by the respondent has therefore no merit and is dismissed.

5. I order that the application for the confirmation of the grant does proceed to hearing on the date the parties shall take in the registry. In the meantime, an order is issued to each of the banks/institutions in paragraph 4 of the affidavit of the respondent sworn on 26th May 2015 to support the application for confirmation to, within 30 days of service, provide to the court a certified copy of the statement of account showing the balances of each account to date. To that extent, therefore, the two applications are allowed. I make no order as to costs as this is a family dispute and each side will benefit from such accounts.

DATED and DELIVERED at NAIROBI this 7th day of DECEMBER 2016

A.O. MUCHELULE

JUDGE