



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Jaswant Singh Boor Singh Dhanjal (Deceased) (Succession Cause 20 of 2006) [2026] KEHC 1080 (KLR) (2 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1080 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 20 OF 2006  
G MUTAI, J  
FEBRUARY 2, 2026  
IN THE MATTER OF THE ESTATE OF JASWANT  
SINGH BOOR SINGH DHANJAL (DECEASED)**

**BETWEEN**

**JOGINDER SINGH DHANJAL ..... 1<sup>ST</sup> ADMINISTRATOR**

**SUKHWANT KAUR DHANJAL KUNDI ..... 2<sup>ND</sup> ADMINISTRATOR**

**AND**

**DALJIT SINGH DHANJAL ..... 1<sup>ST</sup> BENEFICIARY**

**SURJIT SINGH DHANJAL ..... 2<sup>ND</sup> BENEFICIARY**

**JASPAL KAUR NAGI ..... 3<sup>RD</sup> BENEFICIARY**

**AND**

**NIRMAL SINGH DHANJAL ..... INTERESTED PARTY**

**DHANJAL BROTHERS LTD ..... INTERESTED PARTY**

**RULING**

1. This succession cause has a long and chequered history. It has been pending in this court for 20 years and, by all appearances, is nowhere near completion. In furtherance of its primary mandate to distribute the deceased's estate to its beneficiaries, the Probate and Administration Court has issued a plethora of decisions. Two decisions, in particular, bear on the application now before the court.
2. The first of these is the decision Thande J made on 31st October 2018, by which the grant issued to Joginder Singh Dhanjal was revoked, and Joginder Singh Dhanjal and Sukhwant Kaur were forthwith appointed as the joint administrators of the deceased's estate. In that decision, this court directed Daljit Singh Dhanjal to hand over all documents relating to the estate to the new administrators.



3. The second decision is the judgment delivered by Onyiego, J, on 14<sup>th</sup> May 2024, vide which the court issued the following orders: -

“70. In summary, therefore, the following orders shall apply:

- a. That the grant of letters of administration issued herein on 31<sup>st</sup> October 2018 and partially confirmed on 11<sup>th</sup> June 2019 and issued on 14<sup>th</sup> June 2019 is confirmed as a full grant;
- b. That the contempt application against Daljit is still pending, the same having not been disposed of formally;
- c. That Daljit shall, within 45 days from the date of delivery of this judgment, comply with the pending order of the court to produce and submit a full and accurate statement of accounts for the period he was the administrator;
- d. That Joginder and Sukhwant, too, to produce and submit a full and accurate statement of accounts from the date of appointment as administrators to date;
- e. That the DCI Mombasa county to, with immediate effect, institute investigation regarding the alleged deposited 30 kg of gold in the Bank of Baroda by the deceased, whose whereabouts is not known, and take appropriate action in case of theft or fraud involving the same;
- f. That the estate is only entitled to the distribution of shares held by the deceased in the companies where he was the shareholder;
- g. That company assets can not be distributed as estate assets, as a company is a legal entity;
- h. That Daljit and his counsel shall surrender the ownership documents in respect of the ownership documents earlier identified by the court;
- i. That Daljit shall surrender ownership documents and execute transfers in respect of Kwale/Diani/Tiwi 116,138, and 287 to facilitate cancellation of ownership from his name to revert back to the deceased’s name and thereafter distribute to each beneficiary;
- j. In default of the direction in (i) above, the relevant land registry (Kwale Land Registry) shall, without production of such ownership documents, cancel the name of Daljit as the owner and have the title revert back to the deceased’s name, from which transmission shall apply;
- k. That this being a family dispute, each party shall bear own costs;
- l. Mention after 60 days to confirm compliance.”



4. One year after the delivery of the first decision, the 2nd administrator, Sukhwant Kaur Dhanjal Kundi, sought, inter alia, to have Mr Daljit Singh Dhanjal committed to civil jail for a period not exceeding six months, or any such period as may be directed by the honorable court, for disobeying the orders of the honorable Lady Justice M Thande dated 31st October 2018, issued in this matter. This application led to the decision this court delivered on 24th April 2025.

5. In the said decision, at paragraph 39, I stated as follows:-

“I agree with counsel for Mr Daljit Singh Dhanjal that the applicant needed to show that Dhanjal had the custody of the titles. Thus, in my view, the holding in *Abdi Satarhaji & another v Omar Ahmed & another* [2018] KECA 204 (KLR) is apt. The Court of Appeal in the said matter stated that:-

“(26) Secondly, with regard to production of the title documents which were alleged to be in his possession, the 1<sup>st</sup> appellant deposed that since his return from Canada in the year 2009, he did not have any of the title documents. In our view, this amounted to an explanation by the 1<sup>st</sup> appellant as to why he could not comply with that limb of the orders. At the very least, the learned Judge should have given the 1<sup>st</sup> appellant and the respondents an opportunity to address the court further on the whereabouts of the title. It is not clear to us whether it was established that the titles were in the 1<sup>st</sup> appellant’s custody. As matters stood, the evidence before the Judge was not sufficient to establish willful disobedience by the 1<sup>st</sup> appellant to the required standard as succinctly discussed by this Court in *Mutitika v Baharini Farm Limited* [1985] KLR 229: “In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...”

6. I dismissed the notice of motion dated 31<sup>st</sup> October 2018 for being without merit, with no orders as to costs. Noting what I have described as the long and chequered history of this matter and with a view to implementing the decision of Onyiego J delivered, as I have stated, on 14<sup>th</sup> May 2024, I ordered as follows in paragraph 41:

“In order to bring this longstanding matter to a close, I grant Daljit Singh Dhanjal a further 45-day period to prepare and file a full and accurate inventory of the assets and liabilities of the estate as at the time of his appointment as an administrator and also as at the time of his removal. He will also prepare and file statements of account for the estate for the period he administered it, and account for all income that accrued. With the said reports filed, it will be possible to audit his compliance with the decision of M Thande, J, and the Court will therefore be able to guide the process of the distribution of the estate appropriately, to conclude the succession proceedings.”

7. The said decision led, in due time, to the application for recusal now before the court. The recusal application is dated 11<sup>th</sup> July 2025. The orders sought are:

a. Spent;



- b. That the honourable court be pleased to grant a temporary injunction staying proceedings in this matter pending the hearing of the application herein interpartes;
  - c. That the honorable court, that is, the Hon Justice Gregory Mutai, be pleased to recuse himself from hearing the matter herein;
  - d. That, subsequently to the grant of the orders as sought in prayer 3 herein above, the case herein be placed before the Presiding Judge of the High Court, Mombasa, for directions; and
  - e. That the costs of the application be in the cause.
8. It is contended in the grounds in support of the application, as well as in the affidavit sworn by Mr Daljit Singh Dhanjal on 11<sup>th</sup> July 2025 that this court had shown open bias against the applicant “in the manner he is handling the case herein,” failed to completely appreciate the issues before him or to exercise the jurisdiction available to him under the law by not settling/determining all the issues before him, reviewing the judgment delivered on 14<sup>th</sup> May 2024 *sue moto*, and thus laying bias for further litigation on issues already determined and for granting orders for provision in favour of Joginder Singh Dhanjal in disregard of section 30 of the [Law of Succession Act](#) and when challenged, stayed himself a few days later.
  9. The Judge was accused of acting in haste in hearing and deciding applications, of failing in some instances to render himself, and of making orders for provision when the court was *functus officio*. It was contended that the court had shown open bias against the applicant by reviewing the judgment *suo moto*, directing the applicant to file a full and accurate inventory of the estate's assets and liabilities, and allowing the oral application for cross-examination of the applicant.
  10. The applicant urged that the court did not fully appreciate the issues before it, exhibited open bias, and that the applicant's right to a fair hearing under Article 50(1) of the [Constitution](#) was at risk of being violated because the judge lacked impartiality. He contended that the conduct of the honorable Judge discloses reasonable grounds to believe that the Judge will not render a fair determination of any of the issues in contention in the matter and that he should therefore recuse himself.
  11. The application is supported by Surjit Singh Dhanjal, a beneficiary, and Dhanjal Brothers Ltd, an interested party.
  12. The application was opposed by the 2<sup>nd</sup> administrator, who filed grounds of opposition dated 15<sup>th</sup> September 2025, in which she contended that no reason had been advanced to warrant the recusal of the presiding Judge, that the application was based on a misinterpretation of the honourable court's decision and the rulings and failed to disclose any factual or legal basis warranting recusal, that the application did not demonstrate actual bias, apparent bias, conflict of interest, or any other ground recognized under the law for judicial disqualification, that the court was properly seized of the matter and ought to hear and determine it unless there were proper grounds for recusal, that the application offended the overriding objective of the court to facilitate a just, expeditious, proportionate, and affordable resolution of disputes, that there was no bias on the part of the court, and that the application was unmeritorious.
  13. The application was also opposed by the 1<sup>st</sup> administrator, Joginder Singh Dhanjal. His advocates filed written submissions dated 16<sup>th</sup> September 2025, in which they urged that the application for recusal was made in bad faith and intended solely to malign the integrity of this honorable court.
  14. Parties made oral submissions on 2<sup>nd</sup> October 2025. As stated, some of the parties filed written submissions.



15. The applicant's submissions are dated 9th and 29th September 2025. Both sets of submissions deprecate the Judge's conduct. In the second submission, it was urged that the court acted improperly by admitting documents filed out of time.
16. Counsel for Surjit Singh Dhanjal supported the application. It was submitted that Article 50(1) of the *Constitution* guaranteed the right to a fair hearing before an independent and impartial court. The right to a fair hearing under Article 25(c) of the *Constitution* was non-derogable.
17. It was submitted that, on 22nd May 2025, this court allowed an interim order in favor of the 1st administrator despite lacking jurisdiction, and that, on 8th July 2025, the court allowed an oral application seeking to have Daljit Singh Dhanjal cross-examined despite the objection made. The court rendered its decisions without determining the jurisdiction and procedural objections raised, without inviting written submissions, and without identifying the specific affidavit averments necessitating the cross-examination, contrary to settled principles. Counsel submitted that, whereas there was a presumption of impartiality, the same could be rebutted "where the record shows recurrent procedural departures benefiting one side."
18. I have considered the application and the responses by the parties. I have also considered the parties' oral and written submissions. I must now determine whether to recuse myself.
19. It is necessary that I set out what I consider to be the constitutional and statutory provisions that govern the conduct of judges, the applicable case law, and thereafter consider the impugned decision.
20. In discharging their duties, judges are bound by Articles 73, 160, and 232 of the *Constitution* of Kenya, 2010.
21. Article 73 states that: -

“(1) Authority assigned to a State officer—

(a) is a public trust to be exercised in a manner that—

(i) is consistent with the purposes and objects of this Constitution;

(ii) demonstrates respect for the people;

(iii) brings honour to the nation and dignity to the office; and

(iv) promotes public confidence in the integrity of the office; and

(b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.

(2) The guiding principles of leadership and integrity include—

(a) selection on the basis of personal integrity, competence, and suitability, or election in free and fair elections;

(b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;



- (c) selfless service based solely on the public interest, demonstrated by —
  - (i) honesty in the execution of public duties; and
  - (ii) the declaration of any personal interest that may conflict with public duties;
- (d) accountability to the public for decisions and actions; and (e) discipline and commitment in service to the people.

22. Article 160 (1) of the Constitution of Kenya states that:-

“(1) In the exercise of judicial authority, the Judiciary, as constituted by Article 161, shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority.”

23. The values and principles of public service are set out in Article 232 of the Constitution of Kenya, which provides as follows: -

- “(1) The values and principles of public service include—
- (a) high standards of professional ethics;
  - (b) efficient, effective, and economic use of resources;
  - (c) responsive, prompt, effective, impartial, and equitable provision of services;
  - (d) involvement of the people in the process of policy making;
  - (e) accountability for administrative acts;
  - (f) transparency and provision to the public of timely, accurate information;
  - (g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
  - (h) representation of Kenya’s diverse communities; and
  - (i) affording adequate and equal opportunities for appointment, training and advancement at all levels of the public service, of—
    - (i) men and women;
    - (ii) the members of all ethnic groups; and
    - (iii) persons with disabilities.
- (2) The values and principles of public service apply to public service in—
- (a) all State organs in both levels of government; and
  - (b) all State corporations.
- (3) Parliament shall enact legislation to give full effect to this Article.”



24. To ensure that these principles are reflected in the lived conduct of judges and judicial officers, the Judicial Service Commission has a code of conduct for Judges. The Code sets out the situations in which a judge may recuse himself. These are set out in Regulation 21, which states that:-

“ 21.

- (1) A judge may recuse himself or herself in any proceedings in which his or her impartiality might reasonably be questioned, where the judge -
  - (a) is a party to the proceedings;
  - (b) was, or is, a material witness in the matter in controversy;
  - (c) has personal knowledge of disputed evidentiary facts concerning the proceedings;
  - (d) has actual bias or prejudice concerning a party;
  - (e) has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;
  - (f) had previously acted as counsel for a party in the same matter;
  - (g) is precluded from hearing the matter on account of any other sufficient reason; or
  - (h) or a member of the judge’s family has economic or other interest in the outcome of the matter in question.”

25. The conditions that would necessitate a judge to recuse himself have been the subject of a plethora of decisions of the courts of records. I will set out a few below.

26. In the Attorney General of Kenya vs Prof Peer Anyang’ Nyong’o & 10 others EACJ Application No 5 of 2017, it was stated as follows:

“We think that the objective test of “reasonable apprehension of bias” is good law. The test is stated variously, but amounts to this: do the circumstances give rise to a reasonable apprehension, in the view of a reasonable, fair-minded and informed member of the public, that the judge did not (will not) apply his mind to the case impartially. Needless to say, a litigant who seeks disqualification of a judge comes to court because of his own perception that there is an appearance of bias on the part of the judge. The court, however, has to envisage what would be the perception of a member of the public who is not only reasonable but also fair-minded and informed about all the circumstances of the case would be.”



27. In the case of R v Jackson Mwalulu & others CA Civil Application No NAI 310 OF 2004 (Unreported), where the Court of Appeal stated that:

“...When courts are faced with such proceedings for disqualification of a judge, it is necessary to consider whether there is a reasonable ground for assuming the possibility of bias and whether it is likely to produce in the minds of the public at large a reasonable doubt about the fairness of the administration of justice. The test is objective, and the facts constituting bias must be specifically alleged and established...”

28. In Philip K. Tunoi & another vs Judicial Service Commission & Another CA Civil Application NAI No. 6 of 2016 [2016] eKLR, the Court of Appeal stated that:-

“The question is whether the fair-minded and informed observer, having considered the facts, would conclude that it was a real possibility that the tribunal was biased.” The same position was taken by the Supreme Court (per Ibrahim JSC.) in Jasbir Rai and 3 Others v Tarlochan Singh Rai and 4 Others SCK Petition No. 4 of 2012 [2013] eKLR where he observed that, “The Court has to address its mind to the question as to whether a reasonable and fair-minded man sitting in Court and knowing all the relevant facts would have a reasonable suspicion that a fair trial for the applicant was not possible. If the answer is in the affirmative, disqualification will be inevitable.”

29. Applying the above decision to this matter this a case for recusal been made? Put another way, should this court recuse itself?

30. Given the nature of this matter, the court must consider the recusal application and determine whether the averments in support of the application have merit. This is necessarily a delicate task, as the judge who must determine the matter is both the accused and the judge of his own cause.

31. It has been contended that the judge in his ruling on the contempt application “reviewed” the judgment of Onyiego, J. Is that the case?

32. I must note at the outset that the impugned ruling favored Daljit Singh Dhanjal insofar as it dismissed the contempt application as being without merit. That said, the court, noting the orders made by Onyiego, J, in the judgment, the lack of clarity regarding its compliance status, and with a view to implementing the decision, gave Daljit further time to comply.

33. Pursuant to the said ruling, counsel for Daljit Singh Dhanjal filed an inventory of the properties dated 5th June 2025 and further statements of production, sworn on 9th June 2025.

34. Did this court review the judgment of Onyiego J.? As far as I can tell, and as the author of the impugned decision, this court did not do so; my decision was necessitated by the need to move on from the contested status of compliance and resolve the issue once and for all. In my honest view, the matter was stuck. There was a need to get a move on, in a manner of speaking. Thus, in my own reckoning, the decision of this court implemented Onyiego J’s decision and did not review it as claimed. To claim otherwise requires a tortured interpretation of the impugned ruling.

35. It has been stated that this court, in its ruling, did not consider all the issues that had been raised concerning the contempt application. My view is that the said contention is without merit, as the application was deemed to be without merit. The question of whether the application could be amended after judgment, therefore, became an academic exercise that the court did not have to



- determine, given the need to make good use of the court's valuable time. Put another way, the objection became moot, otiose, pointless, and unnecessary, as nothing turned on it.
36. I must point out that if it were true that this court did in fact review the judgment of Onyiego, J., suo moto, or that it failed to adjudicate all the matters before it, the aggrieved parties had the option of either appealing the decision or applying to this court for its review. None of these options was utilized.
37. It has been contended that the court was biased insofar as it allowed the applications seeking to cross-examine Daljit Singh Dhanjal on his affidavit. It is further contended that the court's decision lacked specificity as to which affidavit Daljit was to be cross-examined on and in respect of what particular averments. In my view, the contention is without merit for 2 reasons.
- a. Firstly, the contention by counsel seems to be predicated on a motion that orders for cross-examination of a deponent may be made only where a formal application has been made. With respect, I do not agree. Order 19 Rule 2 of the Civil Procedure Rules provides as follows:
- “Upon any application, evidence may be given by affidavit, but the court may, at the instance of either party, order the attendance for cross-examination of the deponent.”
38. In the case of *Ndunde Investments Limited v Eugene Muthoni Dadet* [2020] KEHC 9654 (KLR), Okwany, J, held as follows: -
- “5. The wording of the above provision connotes that the power to order a deponent to appear in court for purposes of cross-examination is a discretionary power which must be exercised judiciously and only in the most deserving cases. Contrary to the plaintiff's assertions, Order 19 Rule 2 does not specifically provide that a formal application to cross-examine a deponent must be filed before an order to that effect can be made. All that the order states is that the court may order attendance of a deponent for cross-examination at the instance of either party.
39. I must point out that section 47 of the *Law of Succession Act* grants this court the jurisdiction to determine any disputes under the said Act and to pronounce such decrees and make such orders as may be expedient.
40. Rule 73 of the Probate and Administration Rules, 1980 provides that:
- “Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
41. My view is that the court was right to make the impugned decision because it had the jurisdiction to do so, and that, given the nature of the matter, such a cause of action would aid this court in determining the real issues in dispute in this matter.
42. Regarding the provision for dependants, it is my view that the court took into account the severe hardships caused to Joginder Singh Dhanjal and the need for his treatment. Having so stated, the orders this court made were stayed upon the applicant's application and are not in force. There is therefore no prejudice to any of the parties. The application for reasonable provision illustrates the core issues in this matter: the delay in completing the succession matter, in all likelihood, creates severe hardships



for the estate's beneficiaries. The remedy which the applicant and Sukhjait appear to deprecate is for the matter to be concluded without further delay.

43. Noting the foregoing, the submissions/contentions that the court acted with undue haste are unfortunate. Article 159 (b) of the *Constitution* of Kenya, 2010, provides that justice shall not be delayed. A succession cause that has remained unresolved for 20 years casts the Judiciary of Kenya in a bad light and bespeaks injustice to the litigants; it cannot be justified under any circumstances.
44. I must point out that the orders issued by the court were measured, impartial, and intended to achieve a prompt resolution of the matter. The impugned decision was not intended to aid any party.
45. It is necessary to state that during the proceedings before this court, the court has restrained itself as the parties' counsel made allegations in a manner that this court deems as being attempts to intimidate it. The court has done its best to control the proceedings so that progress could be made.
46. I have examined my conscience in light of the allegations. Having done so, I do not see how the applicant, or indeed any reasonable person, could apprehend bias on the part of the court. My sincere view is that none of the grounds for recusal in the Code of Conduct for Judges and the Bangalore Principles apply to me. I find the application for my recusal to be without merit and must fail.
47. I reassure the parties that, if any reinsurance is needed at all, this court will remain impartial and faithfully adhere to its oath of office. The court will do its best to conclude the matter as soon as practicable. This court has no predetermined outcome. The decision that will ultimately be made will be grounded solely on the judge's honest understanding of the facts and the law and that the parties will be accorded reasonable opportunities to present their respective cases.
48. The upshot of time foregoing is that the application dated 11<sup>th</sup> July 2025 is hereby dismissed for being without merit. The matter will be heard by this court.
49. I make no orders as to costs, given the nature of the matter.
50. It is so ordered.

**DATED AND SIGNED IN MOMBASA, THIS 2<sup>ND</sup> DAY OF FEBRUARY, 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Ms Wanjiku for Daljit Singh Dhanjal;

Mr Jama for Sukhjait Singh Dhanjal;

Ms Otieno, holding brief for Dr Aoko, for Nirmal Singh Dhanjal;

Mr Khagram for Joginder Singh Dhanjal;

Mr Oloo for Sukhwant Kaur Dhanjal Kundi; and

Ms Bancy - Court Assistant.

