IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: VISRAM, KARANJA & KOOME JJ.A)

CIVIL APPEAL NO. 14 OF 2017

BETWEEN

NIRMAL SINGH DHANJAL.....APPELLANT

VERSUS

JOGINDER SINGH DHANJAL.....1ST RESPONDENT

DALJIT SINGH DHANJAL.....2ND RESPONDENT

DHANJAL BROTHERS LIMITED....3RD RESPONDENT

SUKWANT KAUR KUNDI.....4TH RESPONDENT

JASPAL KAUR NAGI.....5TH RESPONDENT

(Being an appeal from the Ruling and Orders of the High

Court of Kenya at Mombasa, the Honourable Thande J.,

delivered on 13th October, 2016

in

Probate and Administration Cause No. 20 of 2006)

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JUDGMENT OF THE COURT

[1] The gravamen in this appeal, is the disposal of certain shares in the company called DHANJAL BROTHERS LTD (DBL) and other properties that allegedly belonged to the estate of the late Jaswant Singh Boor Singh Dhanjal *(deceased)* who died intestate on 26th October, 2004 in Tudor Mombasa. The deceased was survived by five children namely, Joginder Singh Dhanjal, (1st respondent) who was the applicant in the court below; Daljit Singh Dhanjal (2nd respondent) and administrator of the deceased estate, Sukwant Kaur Kundi (4th respondent) and Jasper Kaur Nagi (5th respondent). It would appear that when the deceased died, the family authorized the 2nd respondent, **(Daljit)** to apply to become the administrator of their father's estate. On 30th January, 2006, he petitioned for letters of administration over the deceased's estate and the grant of letters of administration was issued by the court on 26th July, 2006. Nonetheless, before the grant was issued and confirmed, **Daljit** while purporting to act as administrator of the deceased estate entered into a settlement agreement on 9th March, 2006 with the deceased's brothers in which certain shares of the deceased's estate were transferred in a very elaborate document titled, *'settlement agreement'*. In the said arrangement, several properties and shares in companies were to be transferred or disposed of; this is where the problems began as the other beneficiaries of the deceased's estate distanced themselves from the said settlement agreement.

[2] Joginder Singh Dhanji, 1st respondent and a beneficiary of the deceased's estate filed an application dated 10th March, 2015 seeking several orders to wit;-

"1. …

2. …

3. That this Honourable Court be pleased to make a declaration that the transfer of the deceased's shares in plots no. MSA BLOCK/ XIX/ 191, MSA BLOCK/ XIII/ 55, MSA BLOCK/ X/ 377 6963 SECT I MN and MSA BLOCK/ XIII/ 34 without Grant of Letters of Administration intestate and confirmation of Grant of Letters of Administration intestate from the names of Jaswant Singh Boor Singh Dhanjal is null and void.

4. That this Honourable Court be pleased to rescind the transfer and registration of plots no. MSA BLOCK/ XIX/ 191, MSA BLOCK/ XIII/ 55, MSA BLOCL/X/377 6963 SECT I MN and MSA BLOCK/ XIII/ 34 in favour of Dhanjal Properties Limited absolutely.

5. That this Honourable Court be pleased to grant an order directing rectification of the Land's Register in respect of MSA BLOCK/ XIX/ 191, MSA BLOCK/ XIII/ 55, MSA BLOCL/ X/ 377 6963 SECT I MN and MSA BLOCK/ XIII/ 34 by restoring the name of the deceased herein, as the legally registered owner of shares, in respect of the subject lands.

6. That the Honourable Court be pleased to make a declaration that the transfer of the deceased's shares in DHANJAL INVESTMENT LIMITED (18750), DHANJAL PROPERTIES LIMITED (125), JAYPEE & SONS LIMITED (1), EXPRESS HOLDINGS LIMITED (1250) without Grant of Letters of Administration intestate and Confirmation of Grant of Letters of Administration intestate from the names of Jaswant Singh Boor Singh Dhanjal is null and void.

7. That the Honourable Court be pleased to grant an Order directing rectification of the Register of members of DHANJAL INVESTMENT LIMITED), DHANJAL PROPERTIES LIMITED, JAYPEE & SONS LIMITED, EXPRESS HOLDINGS LIMITED by restoring the name of Jaswant Singh Boor Singh Dhanjal as the legally registered owner of 18750, 125, 1 and 1250 shares respectively in the above companies.

8. That this Honourable Court be pleased to make a declaration that the Settlement Agreement dated 9th March, 2006 is null and void in so far as it sought to dispose of and transfer the assets of the Late Jaswant Singh Boor Singh Dhanjal without Grant of Letters of Administration intestate and Confirmation of Grant of Letters of Administration.

9. That the Honourable Court be pleased to grant an order compelling the Administrator, Mr. Daljit Singh Dhanjal of the estate of the deceased to render a true, proper and comprehensive account of his administration of the estate of the deceased from the date of the deceased's death to date.

10. That costs be in the cause."

[3] It would appear there was another application that was filed by the 1st respondent contemporaneously with the above application in which he mainly sought declaratory orders to the effect that a "settlement agreement" dated 9th March, 2006 which purported to make dispositions of assets belonging to the estate of his father, be declared null and void. We must state on the outset, the issues herein appear muddled up as commercial transactions involving complex agreement of settlement and disposition of massive properties and shares in companies were brought in a succession cause. This is because some of the properties and shares belonged to the deceased and a very fundamental document being a certificate of confirmed grant of letters of administration had not been issued by the time the settlement agreement was entered into and all the beneficiaries of the deceased, mainly, the 1st respondent and his other siblings alleged that they were not consulted in the whole scheme of arrangement and settlement agreement.

[4] Be that as it may, what is before us is an appeal against the ruling and orders by **Thande J**., following the hearing of the application by way of chamber summons dated 10th March, 2015. In support thereto, the 1st respondent outlined several grounds to buttress his application. He contended that on the strength of a settlement agreement dated 9th March, 2006, Daljit, who subsequently became the administrator of the deceased's estate, had prior to the issuance and confirmation of the grant of letters of administration unlawfully alienated, distributed and transferred parts of the deceased's estate. Consequently, the said transfers were done without authority and as one of the beneficiaries to the deceased's estate, he was disinherited from a portion of his late father's fortune, a situation that was likely to escalate unless the court intervened. According to the 1st respondent, the deceased had acquired various assets, including landed property and shares in private family owned companies during his lifetime. In particular, he identified land described as MSA BLOCK/ XIX/ 191, MSA BLOCK/ XIII/ 55, MSA BLOCL/ X/ 377 6963 SECT I and MSA BLOCK/ XIII/ 34 as well as 18750 shares in Dhanjal Investment Limited, 125 shares in Dhanjal Properties Limited, 1 share in Jaypee & Sons Limited and 1250 shares in Express Holdings Limited as among the properties owned by the deceased but which had been unlawfully distributed by Daljit.

[5] The 1st respondent also relied on the matters stated in his affidavit sworn on 10th March, 2015, it emphasizing that such transfer and distribution was unlawful and invalid, as it offended the provisions of **sections 55** and **71** of the Law of Succession; that the transferees of the assets were not innocent purchasers, but persons within the deceased's family who knew or ought to have known of **Daljits**' want or lack of capacity to transfer. That since **Daljit** had purported to unlawfully act as the personal representative to the deceased's estate, all the dispositions were tainted with illegality, hence null and void. The 1st respondent added that there were more assets belonging to the deceased but which were yet to be alienated or distributed and implored the court to issue conservatory orders to preserve those as well.

[6] The application was opposed by Nirmal Singh Dhanjal (appellant) vide his replying affidavit sworn on 12th May, 2015, in which he stated that following the deceased's demise on 26th October, 2004, three brothers were left surviving him, namely Dalip Singh Dhanjal (Dalip), Narinder Singh Dhanjal and Baldev Singh Dhanjal. He stated that during the deceased's lifetime, the four brothers were co-directors

and shareholders in several family owned companies, the most notable being Dhanjal Brothers Limited (DBL) and Dhanjal Investments Limited (DIL). According to the appellant and **Daljit**, it was for the sake of business expediency and to safeguard the livelihoods of all the dependants that the settlement agreement was entered into. To this end, they stated, it was agreed that **Daljit** and the surviving brothers and the rest of the respondents be delinked from the directorship of the companies. While so doing, Daljit's siblings also agreed to renounce their right to take out letters of administration to the deceased's estate, leaving him as the sole personal representative of the deceased's estate. On the whole, therefore, it was the appellant's case that the change in shareholding was a business decision that had nothing to do with the administration of the deceased's estate.

[7] The position taken by the appellant seems to have received massive support from **Daljit**. In particular, by a replying affidavit sworn on 17th April, 2015, he deposed that the settlement complained of began way back during the deceased's lifetime and as such, the transfer of assets was done with the consent and blessings of the deceased, meaning the 1st respondent's allegations of impropriety are without basis. He reiterated that the assets so transferred were never part of the deceased's estate but rather, were assets belonging to Dhanal Brothers Limited *(DBL)*, a company to which both the appellant and the deceased were directors. Consequently, that following the deceased's demise, the company underwent reorganization and any transfer of company assets was done in a bid to preserve the estate and ensure a steady flow of income for all the beneficiaries.

[8] The appellant also pointed out that one of the assets so transferred, namely, land known as L.R KWALE/ GALU/ KINONDO/670, previously belonged to DBL and does not form part of the deceased's estate. Furthermore, that any acts done by 2nd respondent were done in his capacity as a Director to DBL, not as an administrator to the deceased's estate. Consequently, that since the settlement had been ongoing for the last 9 years without any complaint from the 1st respondent, he should not be heard to raise an objection. Also given that the respondents had all unanimously and willingly renounced their right to the deceased's estate, it was most suspicious that only the 1st respondent was complaining

[9] In a brief rejoinder, the 1st respondent filed a supplementary affidavit denying the delinking process and reiterated that the settlement agreement clearly stated that **Daljit** was purporting to act as a personal representative to the estate before the grant of letters of administration were issued. He added that in so acting, the 2nd respondent had not been appointed by the family members as alleged and that even if renunciation was ever done by the respondents, it was not a *carte blanche* for the 2nd respondent to disinherit the other dependants. The 1st respondent once again emphasized that the 2nd respondent acted without capacity when he caused the alteration of shareholding in the companies.

[10] Upon hearing the parties and their respective submissions, and by a ruling delivered on 13th October, 2016, **Thande J.,** found merit in the application. This saw the settlement agreement of 9th March, 2006 declared void, the transfer of the deceased's 18,750 shares in Dhanjal Investments Limited also voided, an order for the rectification of the register of members of Dhanjal Investments Limited issued; restoring the name of Jaswant Boor Singh Dhanjal and the 2nd respondent ordered to render an accurate account of the estate within 60 days of the ruling.

[11] The appellant was not a party to the succession cause but he opposed the application and seems to have been affected by the said orders as he was key to the settlement agreement. He filed the instant appeal on grounds that the learned Judge erred in;

> **1. Holding that the 1st respondent had the *locus standi* to institute the proceedings on behalf of the estate of the deceased, yet he was not an administrator to the estate.**
>
> **2. Misconstrued the effect of rule 44 of the Probate and Administration rules *(the rules)* when she held that it enabled the 1st respondent to bring proceedings on behalf of the estate before the grant was annulled.**
>
> **3. By allowing the 1st respondent to usurp the role of an administrator to the estate by bringing proceedings during the subsistence of a valid and confirmed Grant.**
>
> **4. By voiding the transfer of 18,750 of the deceased's shares in Dhanjal Investments Limited notwithstanding the court's own finding that the said transfers were based on a confirmed Grant.**
>
> **5. By failing to appreciate that under section 77 as read with Regulation 22 of Table A of the Companies Act, the contents of the settlement agreement were immaterial to the transfer of shares.**
>
> **6. By failing to consider the documentary evidence placed before her showing that the consideration for transfer of the deceased's shares was the surrender of shares in the 3rd respondent by the deceased's three surviving brothers.**
>
> **7. By failing to consider the provisions of section 93 (1) of the Law of Succession Act; and that an order nullifying the transfer of shares to Dalip would affect proceedings pertaining to his estate, as the said Dalip (now deceased).**
>
> **8. By holding that the 1st respondent never executed any renunciations and/or disclaimers; unjustly ordering the reversion of the deceased's shares without making a finding on what should happen to the shares surrendered by the three brothers in exchange thereof; and the rectification of the register of members of Dhanjal Investment Limited to include the deceased who died more than 10 years ago, thereby acting contrary to public policy and the law; and by generally failing to evaluate the evidence and the law placed before her.**

[12] During the plenary hearing, the parties relied on their written submissions which were filed pursuant to leave of court, and they made

some oral highlights. On the part of the appellant, **Mr. Buti,** submitted that the 1st respondent lacked *locus standi* to institute the application in question, given that he was not an administrator to the deceased's estate. Moreover, the letters of administration herein had been issued to the 2nd respondent and the same were yet to be revoked or annulled. Citing a plethora of cases, counsel submitted that the 1st respondent had no authority to institute the proceedings as he did; even if it were to be said that the 1st respondent moved court simply as a beneficiary to the estate, **section 54** of the Law of Succession Act required him to take out a limited grant of letters of administration for purposes of instituting legal proceedings. Having failed to take out a full grant or a limited grant of letters of administration and in view of the subsisting confirmed grant already issued to the 2nd respondent, the 1st respondent lacked the *locus standi* to institute the proceedings.

[13] Counsel further submitted that **Rule 44,** of the rules is limited to annulment or revocation of grant. It does not allow the institution of proceedings for the conservation or preservation or collection of the estate. As a result, to the extent that the orders issued concerned the collection and preservation of the estate, the same were unlawful. In this regard, counsel relied on the decision in **John Kasyoki v. Tabitha Nzivulu Kieti & Another** [2001] eKLR for the preposition that allowing the 1st respondent, a person without letters of Administration, to succeed in that application was tantamount to allowing intermeddling with the estate of the deceased. Counsel also faulted the learned Judge for annulling a valid transfer of shares which in his view flew in the face of the court's own acknowledgment that the transfers were done by the 2nd respondent, to whom a certificate of confirmation of grant had been duly given on 20th April, 2007; that despite having authenticated the transfers which were done by a person with authority, the court nonetheless proceeded to unlawfully annul the otherwise valid transfer. He pointed out that under the **Companies Act,** share transfers are evinced by an instrument of transfer, which may be a stock form or any other instrument of transfer. It follows, therefore, that the instrument of transfer constitutes conclusive evidence of the validity of the transfer and it is upon any party who alleges the contrary to furnish proof of such assertions. In the absence of such proof by the 1st respondent, the court erred in holding that the transfers were invalid; counsel invited us to allow the appeal.

[14] In opposing the appeal, Mr**. Mohammed,** learned counsel for the 1st respondent began by stating the fact that there was no administrator to the deceased's estate when the settlement agreement was signed is not in dispute; that under **Rule 49** of the rules, the 1st respondent was well within his rights as a dependant to move the court as he did in view of the 2nd respondent's blatant disregard of **section 55** of the Law of Succession Act. In this regard, he stated that the cases cited by the appellant's counsel are distinguishable from the present circumstances. It was also submitted that the learned Judge was right in holding that this was an interlocutory application within the summons for revocation of Grant and that the 1st respondent was a proper interested party to the estate of the deceased. Moreover the Judge has inherent powers to make any orders in the interest of justice and to protect an estate of a deceased person.

[15] Regarding the issue of reversion of the deceased's shares, counsel submitted that the settlement agreement purported to recognize the 2nd respondent as the personal representative of the estate of the deceased when he was not. Whilst acting as such, the 2nd respondent executed transfers of shareholding of the group of companies and the assets of the deceased, which undertaking was akin to intermeddling with the estate. Counsel for the 1st respondent was categorical that regardless of whether the appellant termed the transfers as a 're**-organization'** or 're**-distribution'**, whichever way the court may look at it, what transpired resulted in the unlawful transfer of assets belonging to the estate; he cited the provisions of **section 55** of the Law of Succession Act, to underscore that any transfers, done without the authority conferred by a confirmed grant are invalid. On whether the learned Judge erred in ordering the rectification of the members' register, counsel submitted that under the law of contracts, in order for consideration to hold, it must be lawful. In this regard, he relied on the decision in **Barclays Bank of Kenya Limited v. Patriotic Guards Limited** (2015) eKLR. He added that not only were the share transfers premised on an invalid settlement agreement, but the shares purported to have been given in exchange thereof were neither proven nor pleaded in the affidavit in support of the confirmation of grant. Consequently, the learned Judge was right in deeming the consideration void and ordering the rectification of the register. On the whole, the 1st respondent urged this court to find the appeal unmerited and dismiss the same.

[16] The 4th and 5th respondents also filed their submissions, once again reiterating the position taken by the 1st respondent. They added that the contention that the 1st respondent ought to have sought a limited grant prior to filing these proceedings is a fallacy; because the limited grant contemplated under **Rule 14** as cited by the appellant, contemplates a situation where the suit outlives or survives the deceased and as such, is pending against him personally. Such was not the case herein. In addition, they argued, a grant, whether confirmed or not, may be revoked or annulled at any time under **Section 76** of the Law of Succession Act. Summing up the submissions on behalf of the 4th and 5th respondents, Mr. Khalid their learned counsel urged us to uphold the orders by the learned Judge as the settlement agreement was null and void as the transfer of shares were executed by a stranger; thus the orders for rectification of the members' register were valid.

[17] As summarized here above, we have taken time to summarize the gist of what transpired before the learned Judge which clearly shows the impugned orders were principally granted in exercise of her inherent discretion. The law on exercise of judicial discretion is well settled. As held by the Court of Appeal in the case of **MBOGO –V- SHAH, [1968] E.A. 93:**

> **"…..A court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising this discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and as a result there has been injustice".**

See also Rule 73 of the Probate and Administration Rules that gives power to the court to issue any order for ends of justice and to prevent abuse of court.

Having considered the grounds of appeal as well as the submissions of the parties, two issues arise for determination:-

a. Whether the 1st respondent had the *locus standi* to institute the proceedings

b. Whether the court erred in voiding the settlement agreement and ordering rectification of the register of members of

Dhanjal Investments Limited.

[18] On the first issue, the Black's Law Dictionary, 9th Edition at page 1026 defines *Locus standi* as-

> '***The right to bring an action or to be heard in a given forum***'

The appellant questioned the 1st respondent's *locus standi* stating that as at the time he purported to execute the settlement agreement, he had not obtained letters of administration to the deceased's estate, thus he had no authority to seek to preserve the said estate. It is common ground that letters of administration in this case were issued solely to the 2nd respondent and no one else. Equally, not in dispute, that confirmation of the said grant of letters of administration was done on 26th July, 2006 and the same was confirmed on 20th April, 2007. The appellant has however alleged that in order to bring this kind of application, the 1st respondent required to either have a full grant or a limited grant of letters of administration; and that by virtue of his lack of capacity as administrator, he lacked *locus standi* to sue on behalf of the estate or on his own behalf. However, looking at the application, the same is brought within this context of;-

> "**In the matter of: The estate of Jaswant Singh Boor Singh Dhanjal (deceased) of Mombasa."**

Further, under paragraph 1 of the affidavit in support of the application, the 1st respondent described himself as follows:

> **"That I am the deponent herein and the son of the late Jaswant Singh Boor Singh Dhanjal and familiar with the facts in this matter hence clothed with the necessary competence and authority to swear this affidavit."** (emphasis added)

[19] It is apparent that in instituting the application, the 1st respondent was acting in his capacity as an aggrieved dependant. As to whether his *locus standi* was dependent on his having a grant of letters of administration, **section 76** of the Act is instructive. It provides in part that;

> **"A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion"**(emphasis added)

Further to this is **rule 44** of the rules, which provides;

> **"Where any person interested in the estate of the deceased seeks pursuant to the provisions of section 76 of the Act to have a grant revoked or annulled he shall, save where the court otherwise directs, apply to the High Court for such relief by summons in Form 107 and, where the grant was issued through the High Court, such application shall be made through the registry to which and in the cause in which the grant was issued or, where the grant was issued by a resident magistrate, through the High Court registry situated nearest to that resident magistrate's registry."** (emphasis added)

Consequently, under the aforesaid provisions, the summons for revocation of grant may be filed by any party who is interested in the estate. The 1st respondent, having filed as an interested beneficiary was thus possessed of the *locus standi* to file the application. The appellant also contended that under **rule 14,** the 1st respondent was bound to take out limited letters of administration. In view of the foregoing, we find the cases of **Otieno v. Ougo & 2 others** 2008 KLR 948, **Rajesh Chudasama v. Sailesh Chudasama 2014 eKLR** and **Wankford v. Wankford;** all cited by the appellant distinguishable as those suits concerned acts done by persons who purported to act as administrators which was not the case here.

[20] The next issue related to the *locus standi* is the allegation that the 1st respondent was supposed to take out a limited grant under **section 54** of the Act so as to file the application. Under the said section, the court is given power to limit the application of a grant. The section provides as follows:

> **"Limited grants**
>
> **A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act."**

As earlier stated, this was not a case of pursuit of grant by the 1st respondent. He was only seeking to safeguard his rights as a beneficiary. There is nothing in the provisions of **section 54** aforesaid that remotely suggests that the 1st respondent was legally bound to take out a limited grant prior to moving court to secure his interest as a beneficiary; that argument as of necessity fails.

[21] On the second issue, the appellant faulted the learned Judge, arguing that the transfer of shares was valid as it was done after the confirmed grant was issued to the 2nd respondent. S**ections 55** and **71** of the Law of Succession Act makes provisions of the principles that govern distribution of an estate of a deceased person. This is what **Section 55**, states:

> **"No distribution of capital before confirmation of grant**
>
> **No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets, or to make any division of property, unless and until the grant has been confirmed as provided in section 71."**

From the foregoing, it is without doubt that no distribution can be done without a confirmed grant. **Section 71,** gives the timelines within which a grant of letters of administration can be confirmed. However, in this case, it bears repeating that it is not in dispute that a certificate of grant was issued to the 2nd respondent on 26th July, 2006 and confirmed on 20th April, 2007. As a matter of fact the subject matter of the application was not whether confirmation of grant was ever done. Rather, it was whether the distribution of assets was done during the subsistence of that confirmed grant.

[22] It was not in dispute that the deceased owned shares in the group of companies and some of the properties that are listed in the settlement agreement. Also not disputed, is that the said settlement agreement is dated 9th March, 2006 and was executed by the 2nd respondent before he obtained letters of administration. Although the appellant has claimed that the deceased was aware of the settlement agreement we find that has no effect in law as the deceased did not execute the transfers while he was alive. On the face of it therefore, the transfers were undertaken prior to the confirmation of grant and thus offended **section 55** aforesaid. Given this scenario where a party in blatant disregard of the requirements of the Law of Succession purported to transfer properties of the deceased before the grant of representation was confirmed, the learned Judge cannot be faulted for finding the transfers unlawful for having been executed by an unauthorized person. This much was held in the case of **Musa Nyaribari Gekone & 2 others v Peter Miyienda & Another** [2015] eKLR wherein any acts of distribution of the estate done prior to confirmation of grant were held to be void. The learned Judge's finding that the "*settlement agreement"* was void, thus sound and this Court has not been shown any cause to interfere.

[23] On a different note, the appellant also contended that even though the court had found the share transfers to Dalip were done in 2008, long after the confirmed grant had been issued to the respondent, the court nonetheless declared the same illegal. Further to this, the appellant contended that he had produced conclusive evidence, to wit; the share transfer forms to prove the validity of the transfers. As a result, the court should have ruled the transfers were valid and in the absence of any proof by the 1st respondent to the contrary, should have disallowed the application. However, looking at the share transfer form adduced in evidence, under **clause 2.1** thereof, it is indicated that the transfer was done;

> **"In consideration of certain agreements made in a settlement agreement."**

If the "*settlement agreement"* is void, then all that springs from it is equally void. The share transfer transaction cannot hold where the consideration thereof has been vitiated.

[24] Similarly, the argument that the learned Judge turned a blind eye to public policy and the impact that the nullification of transfers would have on the estate of Dalip is neither here nor there. To begin with, that line of argument was never advanced at trial; besides, the fact that an order remedying an illegality will affect another estate is neither here nor there, as pleaded by the 1st respondent, none of the beneficiaries to the unlawful transfers were innocent purchasers. As kin to the Late Jaswant and as his co-directors in the family companies, the transferees were all in a position to know that their brother was deceased and that letters of administration to his estate were yet to be confirmed. Also, the claim that the court ought to have made a finding on the fate of the shares alleged to have been surrendered in favour of the deceased's estate is misplaced, as no claim for those shares was ever made at trial.

[25] Before we dismiss this appeal as we are bound to, it is not without sympathy to the appellant and other parties who are affected by the settlement agreement and the various transfers. We also wish to emphasize the need to ensure due diligence before undertaking massive commercial transactions by ensuring the parties involved have the relevant capacities or instruments to undertake the transfers. If this was done, the 2nd respondent, who apparently had the blessings of his siblings to take out letters of administration, would have followed due process of obtaining the requisite confirmed grant showing the mode of distribution of the deceased estate. Thereafter, it would have been very difficult for any of his siblings to change their minds and to challenge the process. If this process was followed, an application of this nature would never have found its way in a succession matter.

[26] In the upshot, we find no merit in this appeal, which we hereby order dismissed. These being members of the same family, we have no desire of setting them against each other, we order each party to bear their own costs of this appeal.

Dated and delivered at Mombasa this 15th Day of February 2018.

ALNASHIR VISRAM

.....

JUDGE OF APPEAL

W. KARANJA

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JUDGE OF APPEAL

M. K. KOOME

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JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR