



**In Re Estate of Rajesh Mulji Manji Bhundia (Probate & Administration  
E072 of 2022) [2024] KEHC 2466 (KLR) (23 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2466 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
PROBATE & ADMINISTRATION E072 OF 2022**

**G MUTAI, J**

**FEBRUARY 23, 2024**

**IN THE MATTER OF THE ESTATE OF RAJESH MULJI MANJI BHUNDIA (DECEASED)**

**IN THE MATTER OF**

**KIRAN RAJESH BHUNDIA ..... 1<sup>ST</sup> PETITIONER**

**DHRUV RAJESH MULJI BHUNDIA ..... 2<sup>ND</sup> PETITIONER**

**AND**

**RICHMOND HOLDINGS LTD ..... PROTESTOR**

**RULING**

**Introduction**

1. The Grant of Probate of the Written Will of the deceased, Rajesh Mulji Manji Bhundia, was issued by this Court on 24<sup>th</sup> February 2023 to the petitioners. On the 29<sup>th</sup> March 2023, the Protestor filed a Summons for Revocation of Grant of even date seeking to have the grant revoked on the ground that it was obtained fraudulently by the making of false statements, forgery, and concealments from the Court of material facts to the cause. In particular, it was averred that the Petitioners failed to disclose that there is in existence a suit, to wit Mombasa ELC No 89 of 2020, in which suit the Protestor has counterclaimed against the deceased for a sum exceeding Kes.17,000,000.00. The protestor was apprehensive that if the grant was not revoked, the Petitioners may proceed to sell and transfer the assets of the estate, and “the Applicant shall not be able to recover the amount it is owed by the deceased’s estate.”
2. After hearing the application on merit, I dismissed the Summons for Revocation of Grant dated 29th March 2023. I ordered the Petitioners/Respondents to serve the objects Applicant with the Summons for Confirmation of Grant “when the same is filed.”



3. Anticipating the filing of Summons for Confirmation of Grant, the Protestor filed the Affidavit of Protest against the Confirmation of Grant on 19<sup>th</sup> September 2023. In the said affidavit, Mr Abdul Rehman Al-Amoodi, describing himself as the director of the Protestor, deposed that the Protestor and the deceased co-own LR No MN/I/2434, Plot No CR.15662, which forms part of the estate of the deceased. The Protestor owns 2/3 of the property while the deceased owns 1/3. He deposed that the Petitioners did not disclose that there is pending litigation in which the deceased sued the Protestor, to wit Mombasa ELC No 89 of 2020. In the said suit, the Protestor has counterclaimed seeking payment of an amount in excess of Kes.17,000,000.00. It was urged that if the estate is distributed without taking into account the Protestor's counterclaim, the claim before the Environment and Land Court would be rendered nugatory as the Protestor shall not be able to recover the amount it is owed by the deceased's estate, in the event that it succeeded. Further, he deposed that

“as the beneficiaries are entitled to the net estate ... can only be established after all the debts and other liabilities have been settled. Distribution of an estate before creditors are paid is fraudulent.”

4. The Protestor, therefore sought the following orders:-

- a. That an order be made for the preservation and freezing of the one-third [1/3] share of the deceased's estate in LR No MN/I/2434, CR 15662 as security for the aforementioned outstanding sum owed by the Protestor;
- b. That an order be made for the preservation and freezing of the deceased's property being LR No. 12889158, CR No. 19034 Kilifi which forms part of the deceased's estate as security for the aforementioned outstanding sum owed by the Protestor.

5. The Petitioners opposed the Protest and filed a joint Replying Affidavit sworn on 27<sup>th</sup> October 2023. The deponents averred that they only seek to confirm the grant in respect of 1/3 share owned by the deceased, as the other 2/3 was the subject of litigation in Mombasa ELC No 89 of 2020. The Petitioners denied that the Protestor maintained the property and stated that it was not founded on any evidence and had not been proved in Court so as to entitle the Protestor to a freezing order.

6. The Court was urged to dismiss the Protest to the Confirmation of Grant and proceed to confirm the grant.

7. Vide a Summons for Confirmation of Grant dated 16<sup>th</sup> October 2023, the Petitioner sought to have the grant issued on 24<sup>th</sup> February 2024 to them confirmed and that the costs of the application be costs in the cause. They identified the beneficiaries of the deceased's estate as Kiran Rajesh Mulji Bhundia, Dhruv Rajesh Mulji Bhundia, Veeral Rajesh Mulji Bhundia and Krupa Rajesh Mulji Bhundia. The two last-mentioned persons are the daughters of the deceased person. They proposed that the deceased's estate be distributed according to his will.

8. The will, to the extent that it is material, gave the 1/3 share in Plot No 2434/I/MN Kengeleni, Nyali, with a building to Kiran Rajesh Mulji Bhundia and Dhruv Rajesh Mulji Bhundia, to be shared by them equally. This is the property the subject of the contestation between the Protestor and the Petitioners/ Respondents.

9. The Protest was canvassed through Written Submissions pursuant to the directions that this Court issued on 18<sup>th</sup> October 2023.



### Submissions of the Protestor

10. The Protestor submitted that it jointly owns the property known as LR No MN/I/2434, Plot CR 15662, with the deceased. Its share is 2/3, while the deceased owned 1/3. The Protestor avers that it “has exclusively been maintaining the said property and have incurred and continue to incur expenses to-date in excess of Kes.19,487,483.00 as per the Court documents in Mombasa ELC No 89 of 2020, which suit was filed by the deceased and in which the Protestor has a counterclaim.”
11. The Protestor averred that the Executors did not disclose that there was an ongoing case. Reliance was placed on the case of *In re Estate of Julius Ndubi Javan (deceased)* [2018]eKLR, *In re Estate of Kosut Kimaiyo Kiptui (deceased)* [2020]eKLR and *In re Estate of Loise Runji Thiga (deceased)* [2021]eKLR, among other cases. In all these cases, the Courts found for the Protestors.

### Submissions of the Executors/Respondents

12. The Executors/Respondents identified the following issues as coming up for determination: -
  - i. Does the Court have jurisdiction to issue the orders sought? and
  - ii. Have the Protestors substantiated their claim?
13. On the first ground, it was submitted that the objection had been raised challenging the Confirmation of the Grant on allegation of fraud, concealment, or failure to include any part of the estate. It was further submitted that the applicants sought stay or Confirmation of Grant and execution of a judgment “in a matter that has not proceeded for hearing.” It was urged that the share owned by the deceased was not in contention. Relying on the case of *In re Estate of Kiplangat Keter (deceased)* [2021]eKLR, I was urged to find that the protest has no merit.
14. It was contented that although Rule 41(3) and 42(2) of the *Probate and Administration Rules* empower the Court before Confirmation of a grant to remove property which is in contest from the schedule of assets and to have the same determined separately this was not the position in this case as the estate of the deceased is not in contest.
15. On whether the Protesters had substantiated their protest, it was urged that they had not and that the same was merely speculative. The Executors submitted that the claim was not founded on any evidence and had not been proved in Court to entitle the Protesters to obtain any freezing orders over any of the deceased's estate. It was thus urged that I dismiss the protest.

### Analysis and Determination

16. Has the Protestor established a case for the preservation and freezing of some of the assets of the deceased?
17. The Court *In re Estate of Julius Ndubi Javan (deceased)* [2018]eKLR stated as follows:-

“The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries. As of necessity, the estate property must be identified. Thus where issues on the ownership of the property of the estate are raised in succession because they must be resolved before such property is distributed, and that is the very reason why Rule 41(3) of the Probate and Administration Rules was enacted so that claims which are prime facie valid should be determined before confirmation.”



18. Rule 41(3) of the *Probate and Administration Rules* provides that:-

“(3) Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the *Civil Procedure Rules* and may thereupon, subject to the proviso to section 71(2) of the Act, proceed to confirm the grant.”

19. Although the Protest was filed before the Summons for Confirmation of the Grant of Probate of the Written Will of the deceased was filed it is the view of this court that the defect did not cause the Petitioners/Respondents an injustice and is curable under to Article 159(2)(d) of *the Constitution* of Kenya, 2010. Thus I find and hold that this Court has jurisdiction to hear and determine this Protest.

20. I note that there is pending litigation before the Environment and Land Court, Mombasa ELC cause No. 89 of 2020. In the said matter, the Protestor has a counterclaim against the deceased and seeks the 1/3 share owned by his estate in LR No MN/I2434, Plot No CR 15662. The Probate and Administration Court is unable to tell at this point whether the counterclaim will succeed. However, judging from the fact that it hasn't been struck out, the ineluctable conclusion that must be drawn is that there is a prima facie case that ought to be determined on merits. Since the 1/3 share the deceased owns in LR No MN/I/2434, Plot No CR 15662 is the substratum of the ELC case, there is a risk the decision of the said court might be rendered academic if the Petitioners/Respondents are given a free hand to deal with the said property.

21. The Protestor has challenged the confirmation of Grant on the ground that there was no full disclosure of the alleged indebtedness of the estate. I found in my earlier ruling that there was no requirement for a debt which had not crystallised to be disclosed. At this point, however, given the fact their confirmation would permit the executors to dispose of the property, the prudence requires that such disputed property be sequestered while awaiting the finding of the Court with jurisdiction.

22. I see no nexus between the Protestor and LR No. 12889158, CR No. 19034 Kilifi. To issue an order against the said property would be unduly oppressive. The Probate and Administration Court, in any event, needless to say, is not a forum for debt collection. There are other courts that the Protestor may use.

23. In the circumstances of this case, I make the following orders:-

1. I set aside the 1/3 share in Plot No 2434/I/MN Kengeleni Nyali with a building owned by the deceased, also known as LR No MN/I/2434, Plot No CR. 15662 . The distribution of the said property shall await the determination of Mombasa ELC Case No 89 of 2020;
2. I confirm the grant issued on 24 February 2023 in respect of the rest of the deceased's properties. The distribution thereof shall be in accordance with the Written Will of the deceased.

24. Each party will bear own costs.

25. Orders accordingly.



DATED AND SIGNED THIS 23<sup>RD</sup> DAY OF FEBRUARY 2024 AT MOMBASA.

.....

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Mr. Gathu for the Petitioners/Respondents;

Mr. Omwenga for the Protestor; and

Arthur - Court Assistant.

