



In re Estate of Madan Mohan Singh Varma (Deceased) (Succession Cause 1254 of 2017) [2024] KEHC 1774 (KLR) (Family) (22 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1774 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 1254 OF 2017

HK CHEMITEI, J

FEBRUARY 22, 2024

IN THE MATTER OF THE ESTATE OF MADAN – MOHAN SINGH VARMA (DECEASED)

IN THE MATTER OF SUMMONS FOR REVOCATION OF GRANT OF PROBATE WITH WRITTEN WILL (UNDER SECTIONS 76 OF THE LAW OF SUCCESSION ACT, RULES 73 OF THE PROBATE AND ADMINISTRATION RULES)

ATHI STORES LIMITED.....APPLICANT

VERSUS

RUBINDER SINGH CHOUDRIE.....1ST RESPONDENT

KAMALJEET SINGH BHARI.....2ND RESPONDENT

REENA WARMA.....3RD RESPONDENT

RULING

1. This ruling relates to the application dated 8th September, 2021 filed by the Applicant, Athi Stores Limited and notice of renunciation of right to probate of written will sworn by Rubinder Singh Choudre and Kamaljeet Singh Bhari on 24th June, 2022.
2. The application dated 8th September, 2021 seeks for orders that:
 - a. Spent.
 - b. In the first instance and thereafter pending the hearing and determination of this application, the Respondents be restrained from further dealing and/ or interfering with the estate of Madan – Mohan Singh Varma the deceased herein.
 - c. In the alternative to (2) above, in the first instance and thereafter pending the hearing and determination of this application the Respondent be restrained from further dealing and/ or interfering with affairs of Athi Stores Limited, the Applicant herein including L.R No. 18696/ 55.



- d. The grant of probate with written will relating to the estate of the deceased (“the grant”) issued to the Respondents on 14th February, 2018 and confirmed on 17th September, 2021 be revoked and/ or annulled.
 - e. The costs of this application be borne by the Respondents.
3. The notice of renunciation of right to probate of written will, filed by the 1st and 2nd Respondents is consented to by the 3rd Respondent vide consent to renunciation of grant of probate by the executors dated 28th August, 2023.
 4. The 1st and 2nd Respondents, in support of the application to renounce their right of probate and in opposition to the Applicant’s applications for revocation of grant, filed a replying affidavit sworn on 24th March, 2023.
 5. The 3rd Respondent has filed witness statements by herself, Mr. Ashman Puri and Mr. Sunit S. Varma, all dated 20th June, 2023 and 23rd June, 2023.
 6. Mr. Shammit Niranjandass Ghai, in opposition to the renunciation of right of probate of will, swore an affidavit on 9th May, 2023.
 7. The Applicant has filed written submissions to renunciation notice dated 24th June, 2022. The written submissions are dated 24th July, 2023.
 8. The 1st Respondent has filed written submissions opposing the application to renounce executorship. The written submissions are dated 19th June, 2023.
 9. Save for the replying affidavit sworn by Rubinder Choudre and Kamaljeet Singh Bhari on 24th March, 2023, the parties have not filed written submissions on the application dated 8th September, 2021.

Background:

10. This matter relates to the Estate of Madan Singh Varma (hereinafter “the deceased”) who died testate on 5th July, 2017. A certificate of confirmation of grant of probate was issued by this Honourable court on 17th September, 2018 with Rubinder Singh Choudre and Kamaljeet Singh Bhari as the executors.
11. The Applicant challenges the deceased’s will and seeks revocation of the grant of probate vide application dated 8th September, 2021. In the same breath, the Respondents filed a notice of renunciation of right of probate of written will dated 24th June, 2022.
12. Shammit Niranjandass Ghai’s, director at the applicant company objections are as hereunder;
 - a. The main contention is with respect to property known as Land Reference Number 11895/ V – I. R. No. 25641/ 1 under Survey Pan No. 89702. It is alleged that this property is owned by him, the deceased, Santosh Kumari Varma and Sunit Singh Varma – all directors of the applicant and further that vide Memorandum of Understanding dated 15th December, 1996, it was agreed that 20 acres (Plot A, L.R. No. 18696/ 55 – original 11895/1) be hived off this property and transferred to the applicant.
 - b. There is an existing case whose citation is Machakos High Court Miscellaneous Application No. 234 of 2013: Mohan Singh Varma & Sunit Singh Varma v Athi Stores Limited seeking investigation of the applicant’s affairs. The same is under mediation.
 - c. The deceased’s will is challenged on the basis that the will filed in the instant suit Nairobi High Court Succession Cause No. 1254 of 2017: In the Matter of the Estate of Madan – Mohan



Singh Varma (Deceased) and Machakos High Court Miscellaneous Application No. 234 of 2013: Mohan Singh Varma & Sunit Singh Varma v Athi Stores Limited are different from each other in terms of content and completeness.

13. In opposing the application dated 8th September, 2021, Rubinder Singh Choundre and Kamaljeet Singh Bhari, the executors, have stated in their replying affidavit sworn on 24th March, 2023, inter alia that they are not aware of the deceased's will and that they have never been in its possession, that the applicant was never mentioned as beneficiary to the deceased's estate and that they have executed and fulfilled their duties to the deceased estate hence their application for renunciation.
14. The 3rd Respondent (the deceased's wife), Mr. Ashman Puri (deceased's friend of over 40 years) and Mr. Sunit S. Varma (deceased's brother and witness to the will) filed witness statements in support of the executors' replying affidavit sworn on 24th March, 2023 inter alia asserting their knowledge of and witnessing of the deceased's will in Kenya and India.

Analysis and Determination:

15. I have carefully considered the applications, the responses, the witness statements as well as the written submissions filed by the parties and the issues for determination, as crafted by the parties, namely:
 - a. Whether the Executors, Rubinder Singh Choundre and Kamaljeet Singh Bhari, can renounce their executorship after confirmed grant of probate has been issued.
 - b. Does Athi Stores Limited have any HCCC No. 464/ 2000 the court stated that, "*Locus Standi* to file their objection to the notice of renunciation of right of probate of written will dated 24th June, 2022.
 - c. Are Rubinder Singh Choundre and Kamaljeet Singh Bhari entitled to resign their role as executors?

HCCC No. 464/ 2000 the court stated that, "*Locus Standi*:

16. At paragraphs 23 and 24 of *In re Estate of Lucy Akuku Maingey (Deceased)* [2018] eKLR Judge L. A. Achode stated as follows:

“23...The definition of the term HCCC No. 464/ 2000 the court stated that, "*Locus Standi* in the *Black's law Dictionary 9th Edition* is, "the right to bring an action or to be heard in a given forum.”

24. The issue of HCCC No. 464/ 2000 the court stated that, "*Locus Standi* raises a point of law that touches on the jurisdiction of the court and it should be resolved at the earliest opportunity. See *Mary Wambui Munene v Peter Gichuki Kingara and Six others*, Supreme Court Petition No. 7 of 2013; [2014] eKLR.”

17. At paragraph 12 of *In re Estate of Mungiria M'Runguchi (Deceased)* [2022] eKLR Judge L. W. Gitari stated as follows:

“..... There are many decisions on the subject from the court and to quote the decision in the case of *Michael Osundwa Sakwa v Chief Justice and President of Supreme Court of Kenya*



☞ *Another* [2016] eKLR which referred to the matter of *Ms. Priscilla Nyokabi Kanyua v Attorney General & I.E.B.C.* Nairobi H.C. CP No. 1/ 2020 stated that: -

“In Kenya the court has emphatically stated that what gives HCCC No. 464/ 2000 the court stated that, “*Locus Standi* is a minimal personal interest and such interest gives a person standing even though it is quite clear that it would not be more affected than any other member of the population.”

Such interest must be vested legal interest giving the party a right to enforce the claim by way of a law suit.

It follows that for a party to have a HCCC No. 464/ 2000 the court stated that, “*Locus Standi* he must have a vested interest in the subject matter before court. “HCCC No. 464/ 2000 the court stated that, “*Locus Standi*” is appoint of law that touches on the jurisdiction of the court. In the *Law Society of Kenya v Commissioner of Land & Others*, Nakuru HCCC No. 464/ 2000 the court stated that, “*Locus Standi*” signifies a right to be heard. A person must have sufficiency of interest to sustain his standing to sue in Court of Law.”

18. In view of the affidavit evidence on record and in particular the Memorandum of Understanding dated 15th December 1996 concerning the deceased and his partners over the applicants mentioned property and the subsequent shareholding therein i find that the applicant has *locus* to bring this application.
19. At the same time, it is not disputed that the applicant has lodged a claim in the Machakos court and the same according to the 3rd respondent is under mediation. If the applicant had no interest in the estate the parties would not have subjected themselves to the said mediation process regardless of the outcome.

Renunciation of executorship:

20. Section 59 of the *Law of Succession Act* states that any person who has been appointed by a will as an executor thereof may, either by oral declaration before the court or by writing under his hand, renounce executorship, and shall thereafter be finally precluded from applying for grant of probate of that will [emphasis mine].
21. In *re Estate of Fanice Mary Khanali Aura (Deceased)* [2019] eKLR The judge stated as follows:

“...In this matter the validity of the will is challenged. Much as the executrix is entitled to exercise the powers and discharge the duties of an executor, even before grant of probate is made, where the validity of the will, which allegedly appoints her, is under challenge it would mean that the foundation of her authority to act as such would be shaky, and it would be prudent not to assert the right to act as such prior to determination of the question. Where the question arises after a grant has been made, the executor or grant – holder would be entitled to continue acting as such until the court rules on the validity of the will [Emphasis mine]. Where the issue arises prior to the making of the grant then the proper thing to do would be to proceed under paragraph 10 of the Fifth Schedule to the *Law of Succession Act*...”
22. It appears to me that the will or wills as the case might be stands out contested. The executors according to them seemed unaware that the beneficiaries have already proceeded with the said wills and executed as per the wishes of the deceased.



23. To this extent and in particular touching the applicants right over the property mentioned therein namely LR NO 18696/55 the executors cannot be allowed to exit the scene. They must defend the same to the final end. The same applies to the witnesses of the said wills.
24. The fact that the applicants have pointed out some discrepancies in the wills lent credence to the fact that the matter must be determined fully by this court.

Determination

25. I think the court has stated so much to show that there could be unresolved issues relating to the will or wills herein. In that respect it shall be appropriate for the executors to remain till the issues are determined with finality.
26. On property known as Land Reference Number 11895/ V – I. R. No. 25641/ 1 under Survey Pan No. 89702 which is the main borne of contention in the application dated 8th September, 2021 and seeing that nothing else in the deceased’s will is being contested other than the ownership and sub – division of this parcel of land I find that this court lacks jurisdiction to hear and determine the issues surrounding it. The issues are well placed to be canvassed before the Environment and Land Court.
27. In any case the parties had already commenced proceedings vide Machakos High Court Miscellaneous Application No. 234 of 2013: Mohan Singh Varma & Sunit Singh Varma v Athi Stores.
28. At paragraph 34 of *In re Estate of Kinogu Mukiria (Deceased)* [2022] Judge F. Muchemi stated on the same vein that:

“... Pursuant to Article 165 (5) of the *Constitution*, this court lacks jurisdiction in matters to do with the use and occupation of, and title to, land. It is also apparent that when a dispute regarding ownership in respect of the property of a deceased person arises, then the court can set aside the share in dispute to await the outcome of the resolution of the dispute from the court with jurisdiction. As such, the dispute as to ownership of land can only be determined by the Environment and Land Court. Once the ownership of the suit property is ascertained by the Environment and Land Court, the probate court may proceed to distribute the said property to the rightful dependants...”

29. In view of the foregoing the application is allowed as hereunder:
 - (a) The respondents are hereby restrained from renouncing their rights under written will and the notice dated 24th June 2022 is hereby set aside.
 - (b) The respondents jointly and severally are hereby restrained from dealing with the applicant’s property namely LR No 18696/55 registered in the name of Athi Stores Limited pending the determination at the Environment and Land Court vide Machakos Misc. Civil Application Number 234 of 2013 or from any other competent court.
 - (c) The applicant be at liberty to challenge the will(s) on record appropriately if necessary.
 - (d) Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 22ND DAY OF FEBRUARY 2024.

H K CHEMITEI.

JUDGE

