



In re Estate of Chandrakant Shamjibhai Gheewala (Deceased) (Succession Cause 264 of 1994) [2024] KEHC 2912 (KLR) (Family) (21 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2912 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 264 OF 1994
HK CHEMITEI, J
MARCH 21, 2024
IN THE MATTER OF THE ESTATE OF THE LATE
CHANDRAKANT SHAMJIBHAI GHEEWALA (DECEASED)**

BETWEEN

MUKTA CHANDRAKAT GHEEWALA APPLICANT

AND

ELESHKUMAR CHANDRAKANT GHEEWALA 1ST RESPONDENT

SHRIKESH GHEEWALA 2ND RESPONDENT

MAMTA CHANDRAKANT GHEEWALA 3RD RESPONDENT

RULING

1. There are three sets of applications for determination herein. The first application dated 8th February 2023 prays for the following orders:
 - (a) That this court finds that Eleshkumar Chandrakant Gheewala the 1st Respondent be found in contempt of the orders dated 16th October 2019.
 - (b) That the court do issue orders sanctioning the 1st Respondent for contempt of the orders dated 16th October 2019.
 - (c) That the court issues orders to compel the 1st Respondent to pay to the applicant a sum of Kshs 347,519 being arrears of his share for the nursing and further Kshs 302,000 being monthly stipend owing to the applicant.



- (d) Alternatively an order of sequestration against the 1st Respondent's property to satisfy the sum of kshs 649,519 or such other amount to satisfy the orders of 16th October 2019.
2. The Applicant has also prayed for costs.
 3. The application is supported by the Applicant's affidavit sworn on the same date and the grounds thereof.
 4. The 1st Respondent has opposed the application vide his replying affidavit dated 23rd February 2023.
 5. The Applicant has also filed a further affidavit in reply sworn on 2nd October 2023.
 6. The applications by the 1st Respondent dated 23rd February 2023 seeks the following orders:
 - (a) That this court be pleased to find that the first respondent Mamta Chandrakant Gheewala is in contempt of the orders of 16th October 2019 particularly clause 4 stating that "all pending court proceedings relating to this estate in Kenya and Uganda between the parties and related companies are hereby withdrawn".
 - (b) That this court be pleased to sentence the said 1st Respondent to serve a jail term of six months and impose further measures to ensure compliance of the court order.
 7. The applicant prayed for costs as well.
 8. The application is supported by his affidavit sworn on event date.
 9. The 1st Respondent has opposed the application through the replying affidavit on record.
 10. The second application by Eleshkumar dated 23rd February 2023 seeks the following orders:
 - (a) That the court to find that Shrikesh Chandrakant Gheewala, the 1st Respondent herein is in contempt of orders of 16th October 2019 requiring him to pay 50% in his mother's expenses including but not limited to health, insurance and travel with the Applicant.
 - (b) That this court be pleased to sentence the said Shrikesh to serve a jail term of six months and impose further measures to ensure full satisfaction of the said amount of USD 11345.24 and continuous compliance with the order.
 - (c) That this court be pleased to issue orders that the said Shrikesh ,1st Respondent, pay forthwith the sum of USD 11345.24 as today being his arrears with respect to his share of 2nd Respondent medical insurance.
 11. The application is supported by the grounds thereof as well as the affidavit sworn on the same date.
 12. The Respondents have also filed replying affidavits in opposition.
 13. I propose to deal with the twin but different applications for contempt.
 14. The history of this cause is not difficult to appreciate. The deceased herein in his Will appointed the applicant /respondent and for purposes of this matter, his, wife, Mamta as the executrix.



15. The rest of the beneficiaries are the two sons and daughter. The parties after a long and protracted litigation entered into a consent on 16th October 2019 spelling out various orders. Among the key and now contentious order is paragraph 3 which states that:

“That the two sons Elesh Gheewala and Shrikesh Gheewala will give to their mother a monthly stipend of kshs 25000 each. They also share all her other expenses including but not limited, health insurance and travel.”

16. In the application dated 8th February 2023 and 23rd February 2023 both the wife and the son Elesh are accusing each other of failing to pay the upkeep as per the above orders.

17. The other son Shrikesh has been accused by Elesh of not meeting his end of the consent rendering their mother miss her insurance cover among others.

18. There are numerous accusations and counter accusations. In essence what the parties are arguing are simple mathematics or accounting in my view. Each of them has presented what is basically their evidence of contribution towards honouring the terms of the consent.

19. I have perused the submissions on record and in my considered view, unless accounts are taken it becomes difficult whom to lay blame. The two sons consented to take care of their aging mother. If any of them has made payments to the insurance company or not, then it is an issue of accounting.

20. On the other hand, if one has not fulfilled his part then I do not think it is hard to prove. The point which this court is driving home is that accounts have to be taken right from the date of the consent to date.

21. The two brothers are schooled enough to have kept well their contributions. In the premises I find that before I decide whether either of the parties is in contempt accounts ought to be undertaken. I have seen what has been filed in their supporting affidavits and I think that shall be a good starting point.

22. It is clear that each of them was to remit 50% of their respective contribution and therefore whoever will be found to have breached then this court shall pursue the next available sanctions.

23. It is also the finding of this court that at this juncture and as requested by Elesh it is not necessary to subject the widow to any cross examination. That application can only come after the accounts have been taken.

24. Needless to state that if for any iota of reason, he feels that she is no longer of steady mind and therefore being used by his siblings to achieve ulterior motive, then he is at liberty to make appropriate application.

25. On the 2nd application by Elesh the grounds on which he has anchored his application is paragraph 4 of the consent orders which states that:

“That all pending court proceedings relating to this estate in Kenya and Uganda between the parties and all related companies are hereby withdrawn”.

26. It appears that suit number MISC 362 OF 2020 arising out of case No. HCCC 980 of 2018 in Kampala was still pending as at 25th March 2020. There was no evidence that the same was withdrawn as per the consent.

27. At the same time, it appears from the averments of Elesh that the 1st Respondent has gone ahead to make several withdrawals of money as enumerated in the supporting affidavit.



28. This court, I think will be interested with evidence of withdrawal of that suit. The other issues especially monetary withdrawals will be dealt with by the court dealing with the matter. In essence this court cannot adjudicate over it for want of jurisdiction.
29. Suffice to state that the Applicant has establish that the Respondent, the widow in this case has not withdrawn the suits as decreed in the consent. There is no explanation offered at all. I find to that extent she is in contempt of the consent order.
30. This court however takes cognisance of her age and her prevailing ill health. It will give her another chance to effect the order. Should she failed to do so then this court shall consider what appropriate action to take.
31. I supposed the other two Respondents, Shrikesh and Mukta who I believe are size of the matter and are leaning on the side of their mother will take note of this.
32. Consequently, the court makes the following orders:
 - (a) The parties (Eleshkumar Gheewala and Shrikesh Gheewala) shall appear before the Deputy Registrar of this court within 14 days from the date herein where they shall provide accounts as per the consent order dated 16th October 2019.
 - (b) The accounts to be undertaken shall be from the date of the consent, that is 16th October 2019 to date.
 - (c) The Deputy Registrar shall within 14 days after receiving the computed account submit the same to this court for further directions.
 - (d) The Deputy Registrar shall be at liberty to refer any contentious issues to this court.
 - (e) The Respondent (Mamta Gheewala) shall within 14 days from the date herein withdraw all suits as per paragraph 4 of the consent order dated 16th October 2019 and filed an affidavit in this court to that effect.
 - (f) Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF MARCH 2024.

H K CHEMITEI

JUDGE

