



REPUBLIC OF KENYA



**In re Estate of Jaswant Singh Boor Dhanjal (Deceased) (Succession Cause
20 of 2006) [2024] KEHC 4912 (KLR) (14 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 4912 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 20 OF 2006**

JN ONYIEGO, J

MAY 14, 2024

BETWEEN

JOGINDER SINGH DHANJAL 1ST APPLICANT

SUKHWANT KAUR DHANJAL KUNDI 2ND APPLICANT

AND

DALJIT SINGH DHANJAL 1ST BENEFICIARY

SURJIT SINGH DHANJAL 2ND BENEFICIARY

JASPAL KAUR NAGI 3RD BENEFICIARY

AND

NIRMAL SINGH DHANJAL INTERESTED PARTY

DHANJAL BROTHERS INTERESTED PARTY

JUDGMENT

1. These proceedings relate to the estate of the late Jaswant Singh Boor Singh Dhanjal (hereafter the deceased) who died intestate on 26th October 2004. He was survived by five children namely; Jaspal Kaur Nagi (hereafter Jaspal), Jaswant Kaur Kundi(hereafter Sukhwant), Joginder Singh Dhanjal (hereafter Joginder), Surjit Singh Jaswant Dhanjal(Surjit) and Daljit Singh Dhanjal (Daljit).
2. Vide a petition dated 23rd December 2005, Daljit petitioned for a grant of representation. Under form P&A 5, the following properties were listed as constituting the estate of the deceased;
 1. ASSETS APPROXIMATE VALUE
Dhanjal Brothers Limited – 1125 Shares
Dhanjal Properties Limited – 125 Shares



Dhanjal Investments Limited – 18750 Shares
Chania Estuary Dev. Limited – 1 Share
Whitehart Holdings Limited – 1 Share
Idolo Enterprises Limited – 1 Share
Express Holdings Limited – 1250 Shares
Pesce Enterprises Limited – 1 Share
Chempac Limited – 1 Share
Tiwi/Diani Complex/138 Kshs.2,000,000/=
Tiwi/Diani Complex/287 Kshs.2,000,000/=
Tiwi/Diani Complex/116 Kshs.2,000,000/=
Share in Plot Number Mombasa/Block XIX/134 Kshs.15,000,000/=
Share in Plot Number Mombasa/Block XIII/55 Kshs.8,750,000/=
Share in Plot Number Mombasa/Block XIX/191 Kshs.3,000,000/=
Share in Plot Number Mombasa/Block X/377 Kshs.2,500,000/=
Share in Plot Number 6963, Section 1, Mainland North Kshs.1,250,000/=
Share in Plot Number Mombasa/Block XIII/34 Kshs.1,000,000/=
Share in Plot Number 8732, Section 1, Mainland North Kshs.2,000,000/=
Liabilities: Nil.

3. Subsequently, the court made a grant of letters of administration intestate to Daljit on 26th July 2006 and had the same issued on 10th August 2006. It was thereafter confirmed on 20th April 2007.
4. Besides the five children named as survivors, the deceased was also alleged to have been survived by three brothers named as; Dalip Singh Dhanjal (hereafter Dalip), Narinder Singh Dhanjal (Narinder) and Baldev Singh Dhanjal(hereafter Baldev). These brothers were said to have engaged in joint business with the deceased through several companies and also owned several joint properties with the deceased.
5. However, prior to the issuance of the said grant, the estate of the estate through Daljit purported to enter into a negotiated settlement agreement with his uncles the three brothers aforesaid and his cousin one Nirmal in which they agreed on how to reorganize the jointly owned properties. Unfortunately, Joginder thwarted the agreement although a little bit late by moving to court thus challenging its legality. Vide its ruling dated 13th October, 2016, the court nullified the said agreement. Dissatisfied with the said nullification, one Nirmal appealed to the court of appeal and later to Supreme court where he lost both appeals. As a consequence, the limited grant issued to Daljit was revoked and the certificate of confirmation set aside.
6. Subsequently, a fresh grant was made to Sukhwant and Joginder as joint administrators on 31st October 2018 and issued on 30th November 2018. On 30th December 2018, Sunkhwant one of the new administrators filed a chamber summons seeking confirmation of the grant.
7. In the said application, several properties were listed as constituting the estate;
 1. Assets registered in the deceased's name as at the date of his death:



- i. Kwale/Diani Complex/116 (Tiwi).
 - ii. Kwale/Diani Complex 138 (Tiwi).
 - iii. Kwale/Diani Complex 287 (Tiwi).
2. Assets registered in the names of the deceased, and Dalip Singh Dhanjal, Narinder Singh Dhanjal and Baldev Singh Dhanjal as joint tenants in common as at the time of his death;
- i. Plot No. 6963/Sec.1/MN Nyali (Behind Mamba)
 - ii. Plot No. Mombasa/Block X/377 Vihiga Road
 - iii. Plot No. Mombasa/Block XIII/55 KoleKole Street
 - iv. Plot No. Mombasa/Block XIX/134 Lumumba Road
 - v. Plot No. Mombasa/Block X/30 Rasini Road
 - vi. Plot No. Mombasa/Block XIX/191 Likoni Road
 - vii. Plot No. Mombasa/Block XIII/34 Kirinyaga Road
 - viii. Plot 8732/1/MN Nyali.
3. Shares in the following companies as at the time of his demise;
- a. Dhanjal Brothers Limited 1,125 Shares
 - b. Express Holdings 1,250 Shares
 - c. Chempac Limited 1 Share
 - d. Whitehard Holdings Limited 1 Share
 - e. Idolo Enterprises Limited 1 Share
 - f. Chania Estuary Developers Ltd 1 Share
 - g. MerryFieldUK Ltd 1 Share
 - h. Dhanjal Investments Limited 18,750 Shares
 - i. Coast Projects Limited 1 Share
 - j. Waterbeach Investments Limited 1 Share
 - k. Pesce Enterprises Limited 1 Share
 - l. Dhanjal Properties Limited 125 Shares
4. The inventory of assets of the deceased has increased as follows;
- a. Dhanjal Brothers Limited –
 - i. Plot 8843/1/MN Bamburi Quarry
 - ii. Plot 9255/1/MN Bamburi Quarry
 - iii. Plot 4122/MN (CR No. 17961) Port Reitz
 - iv. Msa/1/445/MS Shelly Beach –Likoni (South Coast)



- v. Plot 437/1/MN
 - vi. Plot No. 9247/1/MN Shanzu
 - vii. Plot No. 9240/1/MN Shanzu
 - viii. Plot No. 9147/1/MN Shanzu
 - ix. Plot 1550/1/MN Picollo
 - x. Plot 1030/1/MN (CR No. 9246) Port Reitz
 - xi. Plot 1248/V1/MN Chaani-Changamwe
 - xii. Plot 4433 Malindi
 - xiii. Plot No. Mombasa Sec.1/MN/547
 - xiv. Plot No. Mombasa Sec.1/MN/8493
 - xv. Plot No. Mombasa Sec.1/MN/2920
 - xvi. Kilifi/Kaliangombe/Jimba/683 Pwani Quarry
 - xvii. CR No. 20595 Subdivision CR No. 18984/1
 - xviii. CR No. 25182
 - xix. CR No. 20404
 - xx. CR No. 1903
 - xxi. CR No. 2543
 - xxii. CR No. 43942 (Subdivision 4692 (Original Number 3146/2) SecVI Mainland North.
 - xxiii. CR No. 43947 (Subdivision 4695 (Original Number 3665/2) SecVI Mainland North.
 - xxiv. CR No. 4691 (Subdivision 4692 (Original Number 3146/1) SecVI Mainland North
 - xxv. Unsurveyed Quarry Site.
- b. Dhanjal Properties Limited
- i. K/G/K/670 Kwale
 - ii. Plot MN/VI/3812 Port Reitz
 - iii. Plot MN/VI/1188 Port Reitz
 - iv. Plot K/G/K/659 Galukinondo
 - v. Plot MN/1/3082 Changamwe
- (c) Express Holdings Limited
- i. Plot MN/1/3081-(CR No.15728)



- (d) Coast Projects Limited-1 Share
 - i. CR. No. 23225 (Plot No. 5185).
 - ii. CR No. 2322 (Plot No. 5182).
 - iii. CR No. 23223 (Plot No. 5183).
- (e) Dhanjal Investments Limited
 - i. Plot No. 901/1/MN (Travellers Beach Hotel)
 - ii. Plot No. 917/1/MN (Travellers Beach Hotel)
 - iii. Plot 1557/1/MN (Travellers Beach Hotel)
- (f) Chania Estuary Limited
 - (i) Plot 8834 (CR No. 8834)
 - (ii) Plot No. 3365 (CR No.17256)
 - iv. Plot No. 3362 (Original 2902/2/Malindi (CR No. 17254)
- (g) Waterbeach Investments Limited
 - (i) CR No. 2713 (LR No. 1/9320)
- (h) MerryField UK Limited
 - (i) Title No. MX172876-36 Dormers Avenue Southhall, Middlesex, UBI 2ST, UK.
 - (ii) Title No. NGL 308786-2 Waxlow Crescent, SouthHall, Middlesex, UBI, UK.
 - (iii) Unknown Titles Numbers 5 properties comprising of seven houses/flats, South London, UK.
- i. Jaypee & Sons Limited
 - i. Plot 292/SecXVI
 - ii. Plot 293/SecXVI
 - iii. Plot 294/SecXVI
 - iv. Plot 295/SecXVI
 - v. Plot 296/SecXVI
 - vi. Plot 297/SecXVI
 - vii. Plot 298/SecXVI
 - viii. Plot 299/SecXVI
- (j) Chempact Limited
 - i. CR No. 26020 (MN/1/9294)
 - ii. CR No. 26021 (MN/1/9297)



- iii. CR No. 26022 (MN/1/9298)
- iv. CR No. 26023 (MN/1/9300)
- v. CR No. 26024 (MN/1/9301)
- vi. CR No. 26983 (MN/1/9299)
- vii. CR No. 26980 (MN/1/9386)
- viii. CR No. 26982(MN/1/9392)
- ix. CR No. 27280 (MN/1/9394)
- x. CR No. 27279 (MN/1/9393)

5. Inventory of movable assets;

a. Engineering Workshop

- i. Big Lathe Machine
- ii. Small Lathe machine
- iii. Big Drill machine
- iv. Plate Cutter
- v. Hydrolic Press
- vi. Assorted tools
- vii. Valve cutting machines
- viii. Grinding machines
- ix. Small grinding machines

b. Fabrication workshop

- i. Welding machines
- ii. Gas welding machines
- iii. Spray compressor
- iv. Small concrete mixers
- v. Big concrete mixers
- vi. Concrete lifts
- vii. Portable welding plant
- viii. Office furniture & Fittings
- ix. Mechanical workshop tools
- x. Small construction equipment.
- xi. main store spares & accessories stock



- xii. Scaffolding clamps
- (c) Electric workshop
 - i. Fittings and accessories
 - Major items of the plant
 - i. Neumatic Clark Roller
 - ii. Seating Cap 8000KG
 - iii. 6000KG CC216.8 Ton Twin Dru
 - iv. Vibrating Roller
 - v. 3 units tandem roller (steel)
 - vi. Leyland pressure distributor 4500 LDT
 - vii. Komatsu Grader CD 611R
 - viii. CAT 950 Pay Loader
 - ix. Self-propelled CA 25 Vibro Roller
 - x. Concrete mixed 14/10
 - xi. Small Bomag Roller
 - xii. CAT M Grader
 - xiii. 3 units CAT M Scrapper
 - xiv. 1 unit Hamm GRQ 10 Rubber Wheeled Road Roller
 - xv. CAT excavator 215
 - xvi. Phoenix chip spreader
 - xvii. Caterpillar D8H Dozer
 - xviii. Caterpillar D8 dozer
 - xix. Caterpillar D9 Dozer
 - xx. Pocain excavator
 - xxi. Caterpillar 950
 - xxii. Caterpillar 966
 - xxiii. 2pc JCB backhoe
 - xxiv. Pulver mixer
 - xxv. Asphalt mixer plant
 - xxvi. Aveling Burford Master Pavoir
 - xxvii. Grit Roller



- d. Joinery workshop
- i. 1No. Planner Thicknesser 24”
 - ii. 2No. Planner Thicknesser 20”
 - iii. 2No. Planner Thicknesser 15”
 - iv. 2No. Surface Planers 20”
 - v. 3No. Small cross cut saw
 - vi. 4No. Circular saw
 - vii. 1No. Big band saw
 - viii. 2No. Small band saw
 - ix. 2No. cross cut saw (big)
 - x. 2No. Spindle modular machine
 - xi. 1No. Slot mortice culter
 - xii. 1No. Louver machine
 - xiii. 3No. Router
 - xiv. 2No. Tenones machine
 - xv. 3No. Sand papering machine
 - xvi. 1No. Big door crump
 - xvii. 3No. Dust extraction units
 - xviii. 1No. Drill machine
 - xix. 1No. Compressor & Spray gun
 - xx. 2No. wood lathe machine
 - xxi. 1No. Bandsaw joining machine
 - xxii. 1No. Blockboard press
 - xxiii. 1No. Blade sharpening machine
 - xxiv. 5No. Work Bences
 - xxv. Stocks & tools.
- e. Port Reitz Yard
- i. 2No. Concrete pipe making machine 6”-48”
 - ii. 2No. concrete Block making machine with Mold.
 - iii. 1No. Concrete Road paving machine
 - iv. 1No circular concrete mixer



- v. 1No. concrete mixer
 - vi. 1No. scaffolding pipes
 - vii. Various moulds for concrete products, kesks, paving blocks
 - viii. Materials in store and other assorted materials
 - ix. 1No. 20ft container with used CAT and Komatsu spares
 - x. 1No. 15ft mobile office
 - xi. 1No. Morihill farm tractor
 - xii. 1No. Vibrating Bin Feeder.
- Kokotoni Quarry
- xiii. WibauAsplt plant, 70 tons per Hr Capacity (Germany make)
 - xiv. Kuken Mobile Crushing plant 100 tons/Hr Capacity (England Make)
 - xv. Parker crushing plant screen & accessories (England make)
 - xvi. 2No. Dum Trucks aveling Bradford (England make)
 - xvii. Air compressor, Airman with all ancillary (Japan)
 - xviii. Small air compressor, Holman (England)
 - xix. Caterpillar Wheel Loader, 966C
 - xx. Caterpillar wheel loader, 920
 - xxi. 5No. small jack hammer drills
 - xxii. 2No. Tipper Cap 14 tons
 - xxiii. Tools & Equipment, welding exploder
 - xxiv. 15 old tippers
 - xxv. Wagon drill on tracks 2 units (England)

e. KPR & L Office

SUBPARA i.

- 1 No. Winget concrete mixture
- ii. 2No. Dumpers
- iii. 1No. circular saw
- iv. 1No. Planer
- v. 2No. work benches
- vi. Office furniture
- vii. Tools and spanners
- viii. Site office



- ix. Steel round & twisted
 - x. Shuttering material
6. Inventory of movable assets of the deceased registered in the names of Dhanjal Brothers Limited and have continued to increase;
- i. Blow knox paviour PF 90 England (1980)
 - ii. Blaw Knox Pavoir England (1995)
 - iii. CAT 966 Shovel KZM 711
 - iv. Komatsu grader KZM 713
 - v. Komatsu grader KAA 706R
 - vi. Dynapac Flat Roller KAA 798Y
 - vii. Dynapac flat roller KAA 911G
 - viii. Mitusbishi grader KAB 389V
 - ix. Rubber Roller KAB 511U
 - x. JCB (excavator) KAC 427V
 - xi. CAT 320 (excavator) KAG 154P
 - xii. Komatsu grader KUH 845
 - xiii. CAT 950F Shovel 4FT 14674
 - xiv. CAT 936 Shovel Bamburi Quarry Chassis No. 3304DI
 - xv. CAT 428C Caterpillar JCB KAP 119Q
 - xvi. D5H CAT bull dozer Chassis No. 3WB00614
 - xvii. 1No. Leyland Superdexter Horse
 - xviii. CAT 931C
 - xix. PC 300 Excavator
 - xx. Caterpillar 428C Backhoe
 - xxi. V/W Passat KAN 975N
 - xxii. Landrover Discovery KAH 646Q
 - xxiii. Diahastu Charade KAH 674B
 - xxiv. Diahastu Applause KAH 016Q
 - xxv. Toyota Land cruiser KAN 311V
 - xxvi. Suzuki Vitara KAP 702N
 - xxvii. Mercedes Benz C180 KAQ 075E
 - xxviii. Toyota Prado KAM 207G



- xxix. V/W Golf KAR 633E
- xxx. Isuzu Tipper 14 Ton KZM 714
- xxxi. Isuzu Tipper 14 Ton KZL 317
- xxxii. Isuzu Tipper 14 Ton KAH 595T
- xxxiii. Isuzu Tipper 14 Ton KAG 594T
- xxxiv. Isuzu Tipper 14 Ton KAG 674T
- xxxv. Mitsubishi Tipper 18 Ton KAP 311N
- xxxvi. Mitsubishi Tipper 18 Ton KAP 654R
- xxxvii. Isuzu Tipper 9 Ton KAP 659R
- xxxviii. Tata Tipper 3 Ton KAP 616K
- xxxix. Fuso Long Chasis KAE 976W
- xl. Fuso Tipper 8 Ton KAB 216M
- xli. Mercedes Water Tanker KRZ 433
- xlii. Mercedes water tanker KJZ 439
- xliii. Toyota Pickup KAE 956Z
- xliv. Isuzu Tuffer Pickup 1 Ton KAM 448V
- xlv. Isuzu Tuffer Pickup 1 Ton KAM 450V
- xlvi. Ford Ranger Pickup 1 Ton KAP 825N
- xlvii. Ford Ranger Pickup 1 Ton KAP 830N
- xlviii. Ford Ranger Pickup 1 Ton KAP 835N
- xlix. Low Loader and Horse KTE 064,ZA3690
- l. Mercedes Articulate Tipper 25 Ton KAB 217M
- li. Mercedes Articulate Tipper 25 Ton KTJ 818
- lii. Nissan Double Cabin KUZ 449
- liii. Toyota Double Cabin KYH 179
- liv. Water Tanks 1 big 2 small
- lv. KAD554F
- lvi. KAB 217M
- lvii. KAH 674B
- lviii. KAP 975N
- lix. Caterpillar DBH Dozer



- lx. Poclain Excavator
 - lxi. Caterpillar 966C
 - lxii. Caterpillar Wheel Loader 951C
7. Inventory of immovable assets more particularly bank accounts of the deceased registered in the names of Dhanjal Brothers Limited and have continued to increase;
- i. DTB Current Account No. 0202220082- Kshs.88,335 (Debit)
 - ii. DTB Loan Account No. 0202220032-Kshs.182,572,238 (Debit)
 - iii. KCB Bank Account No. 1106467426 –Kshs.1,936,578 (Credit)
 - iv. All fixed Deposits Accounts
8. Later, on 10th October June 2019, parties entered into a consent in which they agreed on beneficiaries and undisputed properties giving rise to a partial confirmation of the grant made on 11th June 2019 and issued on 14th June 2019.
9. Consequently, the estate was distributed equally as follows;
- Schedule



Name	Description of properties	Share of Heirs
Jaspal Kaur Nagi Joginder Singh Dhanjal Surject Singh Dhanjal Daljit Singh Dhanjal Sukhawant Kaur Dhanjal Kundi Jaspal Kaur Nagi Joginder Singh Dhanjal Surejeet Singh Dhanjal Daljit Singh Dhanjal Sukhwant Kaur Dhanjal Kundi	Kwale/Diani Complex/116 Tiwi Kwale/Diani Complex/138 Tiwi Kwale/Diani Complex/287 Tiwi Plot No. 12889/161, Kilifi ¼ Share of Plot No. Msa/Block X/377 ¼ Share of Plot No. Msa/Block XIII/55 ¼ Share of Plot No. Msa/Block XIX/134 ¼ Share of Plot No. Msa/Block X/30 ¼ Share of Plot No. 8732/I/MN 1125 Shares at Dhanjal Brothers Ltd 1250 Shares at Express Holdings Ltd 1 Share at Chempac Ltd 1 Share at Whitehard Holdings Ltd 1 Share at Idolo Enterprises Ltd 1 Share at Chania Estuary Developers Ltd 1 Share at Merryfield UK Ltd 18,750 Shares at Dhanjal Investments Ltd 1 Share at Coast Projects Ltd 1 Share Waterbeach Investments Ltd 1 Share Pesce Enterprises Ltd 125 Shares Dhanjal Properties Ltd Money held in deceased's account Bank of Baroda, Mombasa Branch	1/5 Share each less any money owed by any beneficiary to the Estate 1/5 Share each less any money owed by any beneficiary to the Estate

10. Aggrieved by this development, Nirmal who came in as an interested party being a nephew to the deceased, moved the court vide summons dated 25th February 2020, seeking to have the grant revoked and stay of execution thereof pursuant to Section 76 of the *law of succession Act*. However, the court did not find merit in the application and in its ruling delivered on 25th September 2020 dismissed the same thus paving way for the hearing of the application for confirmation for issuance of a full grant.
11. In response, the 1st beneficiary/1st respondent one Daljit filed a replying affidavit sworn on 8th February 2019 stating that the applicants/administrators were rushing to distribute assets they had not ascertained their status through obtaining searches from relevant offices. That the application is incompetent as one of the administrators Joginder Singh did not swear an affidavit in support. That he was not the custodian of family documents to be held accountable.
12. He disposed that the estate had liabilities which must be settled first before distribution of the net estate. That after his siblings executed disclaimers and renounced their entitlements to the estate, he transferred to himself some properties and charged the same to Diamond Trust Bank to secure loans to settle outstanding debts due from the estate. That Dhanjal brothers was owing Diamond Trust bank



Kshs 700m and cannot be shared out. That shares held by Dhanjal brothers ltd were dissolved and the deceased's children got 225 shares each hence the same cannot be distributed twice.

13. He further deponed that all properties listed under sub-headings; engineering, fabrication workshop, electric workshop, major items of the plant; joinery workshop; Portreiz yard; Kokotoni quarry and KPR &L Offices were floating debentures held by DTB and the same now stands at Kshs700m.
14. On his part, Surjit filed his affidavit of protest sworn on 8th February 2019 thus stating that the list of assets indicated in the application was not correct. He deponed that the properties listed under the name of Dhanjal brothers to which he was a director were not free properties of the estate. That all properties listed under paras.24-32 belong to independent entities and not the estate.
15. He further deposed that the estate had liabilities which ought to be disposed of before distribution of the estate. That the administrators should give a full account of the estate before distribution of the estate. He urged that only shares in the companies can be shared out and not the company assets.
16. That the only assets that can be available to the estate are those listed under paragraph 20 of the affidavit due to the fact that they were registered under the deceased's name before he died and that Daljit was willing to return them back.
17. In her rejoinder, Sukhwant filed supplementary affidavit sworn on 11th February 2019 showing the status of the assets indicated in her affidavit in support of the chamber summons application
18. Subsequently, on 21st June 2019, Sukhwant filed list of disputed properties as follows;

List of Disputed Assets



****	Asset Details	Original Registered Proprietor	Reasons for Dispute by the Respondent
1.	Kwale/Galu/ Kinondo/670	Dhanjal Properties Ltd	-Affected by Nullified Settlement Agreement. -Restore in the name of Dhanjal Properties Ltd. -Daljit transferred this property to his personal name after acquiring it from Dhanjal properties Ltd, via the settlement agreement.
2.	Kwale/Galu/ Kinondo/659	Dhanjal Properties Ltd	-Affected by Nullified Settlement Agreement. -Restore in the name of Dhanjal Properties Ltd. -Title deed has not been provided by Daljit Singh Dhanjal. -Property may have been illegally sold.
3.	Mombasa M.S Block/1/445 Shelly Beach Likoni	Dhanjal Brothers Ltd	-Affected by Nullified Settlement Agreement -Restore in the name of Dhanjal Brothers Ltd. -Title deed has not been provided by Daljit Singh Dhanjal. - Pay rent/royalties due to the estate from 2004.
4.	L.R Number 1188, Section 1, M.N, Mombasa Port Reitz	Dhanjal Properties Ltd	-Affected by Nullified Settlement Agreement. -Restore in the name of Dhanjal Properties Ltd. -Title deed has not been provided by Daljit Singh Dhanjal.



			-Pay rent/Royalties due to the estate from 2004.
5.	L.R Number 1248, Section VI, M.N Mombasa Chaani-Changamwe CR No. 10293	Dhanjal Brothers Ltd	-Affected by Nullified Settlement Agreement. -Restore in the name of Dhanjal Brothers Ltd. -Title Deed has not been provided by Daljit Singh Dhanjal. -Pay rent/royalties due to the estate from 2004.
6.	L.R No 4122, Section 1, M. N. Mombasa CR No. 17961	Dhanjal Properties Ltd	-Affected by Nullified Settlement Agreement -Restore in the name of Dhanjal Properties Ltd. -Title deed has not been provided by Daljit Singh Dhanjal. -Pay rent/royalties due to the estate from 2004.
7.	L.R Number 3081, Section VI, M.N Mombasa CR No. 15728	Express Holdings Ltd	-Affected by Nullified Settlement Agreement. -Restore in the name of Express Holdings Ltd. -Title deed has not been provided by Saljit Singh Dhanjal. -Pay rent/royalties due to the estate from 2004.
8.	L.R Number 3082, Section VI, M.N Mombasa Changamwe	Express Holdings Ltd	-Affected by Nullified Settlement Agreement. -Restore in the name of Express Holdings Ltd. -Title deed has not been provided by Daljit Singh Dhanjal. -Pay



			rent/royalties due to the estate from 2004.
9.	Mombasa/Block/1/MS/437	Dhanjal Brothers Ltd	-Affected by Nullified Settlement Agreement. -Restore in the name of Dhanjal Brothers Ltd. -Title deed has not been provided by the Daljit Singh Dhanjal. -Pay rent/royalties due to the estate from 2004.
10.	Subdivision Number 3812, Section VI, Mainland North, Port Reitz	Dhanjal Properties Ltd	-Affected by Nullified Settlement Agreement. -Restore in the name of Dhanjal Properties Ltd. -Title deed has not been provided by Daljit Singh Dhanjal. -Pay rent/royalties due to the estate from 2004.
11.	Plot 1030/VI/MN-Port Reitz Yard (Sub division), (CR No. 9246) Red Sketch	Dhanjal Properties Ltd	-Affected by Nullified Settlement Agreement. -Restore in the name of Dhanjal Properties Ltd. Title deed has not been provided by Daljit Singh Dhanjal drawings showing sketches are not attached to the settlement agreement. -May have been divided into; MN/VI/4691 MN/VI/4692 MN/VI/4693 MN/VI/4694 MN/VI/4695 -4691/4695 sold to Buzekke personally by Daljit Singh Dhanjal &



			Surjit Singh Dhanjal whilst under caveat in 2015 and not by the Bank for Kshs.200,000,000, Sale agreement to be revoked. -Pay rent/royalties due to the estate from 2004.
12.	Plot 1030/VI/MN-Port Reitz Yard (Sub division) (CR	Dhanjal Properties Ltd	-Affected by Nullified Settlement Agreement. -Restore in the name of Dhanjal Properties Ltd. -Title deed has not been provided by Daljit Singh Dhanjal. - Pay rent/royalties due to the estate from 2004.
13.	MN/VI/3146	Dhanjal Properties Ltd	- Affected by Nullified Settlement Agreement. -Restore in the name of Dhanjal Properties Ltd. -Title deed has not been provided by Daljit Singh Dhanjal. -May be the mother title deed for subdivisions; MN/VI/4691 MN/VI/4692 MN/VI/4693 MN/VI/4694 MN/VI/4695 -4691/4695 sold to Buzekke for Kshs.200,000,000, sale agreement to be revoked. -Pay rent/royalties due to the estate from 2004.
14.	LR 8732/MN/1 Nyali Greenwood Drive CR 25182	Jaswant Singh Dhanjal Baldev Singh Dhanjal Nariender	-Restore the original proprietors. -Pay rent/royalties due to the estate from 2004.



		Singh Dhanjal Dalip Singh Dhanjal	
15.	Plot 1550/1/MN Picollo CR 13472	Dhanjal Investments Ltd	-Restore in the name of Dhanjal investments Ltd. - Title deed has not been provided by Daljit Singh Dhanjal.
16.	CR 1903	Dhanjal Properties Ltd	-Restore in the name of Dhanjal Properties Ltd. -/title deed has not been provided by Daljit Singh Danjal.
17.	Plot No. 2421 SEC1MN	Dhanjal Brothers Ltd	-Restore in the name of Dhanjal Brothers Ltd. -Title deed has not been provided by Daljit Singh Dhanjal. - Pay rent/royalties due to the estate from 2004.
18.	Mombasa/Block CK/ XXI/164	Dhanjal Brothers Ltd	-Restore in the name of Dhanjal Brothers Ltd. -Title deed has not been provided by Daljit Singh Dhanjal. - Pay rent/royalties due to the estate from 2004.
19.	CR 26211 LR MN/1/9231	Dhanjal Investments Ltd	-Restore in the name of Dhanjal Investments Ltd. - Title deed has not been provided by Daljit Signh Dhanjal. - Pay rent/royalties due to the estate from 2004.
20.	LR 13443 Tiwi	Dhanjal Investments Ltd	-Restore in the name of Dhanjal Investments Ltd. - Title deed has not been provided by



			Daljit Singh Dhanjal. - Pay rent/royalties due to the estate from 2004.
21.	CR 9242 MR No. MN/1/901	Dhanjal Investments Ltd	-Restore in the name of Dhanjal Investments Ltd. - Title deed has not been provided by Daljit Singh Dhanjal. - Pay rent/royalties due to the estate from 2004.
22.	CR 9505 LR No. MN/1/917	Dhanjal Investments Ltd	Restore in the name of Dhanjal Investments Ltd. - Title deed has not been provided by Daljit Singh Dhanjal. - Pay rent/royalties due to the estate from 2004
23.	Kshs.100,000,000	Fixed Deposit in the name of Jaswant Singh Dhanjal	-Held with DTB Bank. -Daljit to provide these account details and statements. -Daljit to transfer back the money to the Estate.
24.	Kshs.45,000,000	Dhanjal Brothers Ltd	-Affected by Nullified Settlement Agreement. -Uncles required to pay the sum back to Dhanjal Brothers Ltd. -Return shareholding of Dhanjal company as per Articles of Association Jaswant Singh Dhanjal Baldev Singh Dhanjal Narinder Singh Dhanjal Dalip Singh Dhanjal



25.	30KG Gold	Jaswant Singh Dhanjal	-Restore back to Bank of Baroda
26.	Kshs.291,000,000/= from Ministry	Dhanjal Brothers Ltd	-Affected by Nullified Settlement Agreement. -Daljit to account for his sum of money. -Pay the estate its due share with interest
27.	Dhanjal Brothers Directorships & Shareholdings	Jaswant Singh Dhanjal Baldev Singh Dhanjal Nariender Singh Dhanjal Dalip Singh Dhanjal	-Affected by Nullified Settlement Agreement. -Restore Directors, as all transfers of shares were nullified. -Daljit, Nirmal, Surjit & Joginder do not hold Directorships/ Shares in the Articles of Association of this Company. -Return Shareholding/ Directorship of Dhanjal Brothers Ltd as per Articles of Association (attached). -Daljit has received Kshs.341,293,102.00 money for the Company on 24 th January 2019.
28.	Chania Estuary Directorships & Shareholdings	Jaswant Singh Dhanjal Baldev Singh Dhanjal Nariender Singh Dhanjal Dalip Singh Dhanjal	-Affected by Nullified Settlement Agreement. Restore Directors, as all transfers of shares were nullified. -Daljit & Nirmal do not hold Directorships/ Shares in the Articles of this company.
29.	2920/1/MN		-Affected by Nullified Settlement



			Agreement as these properties were purchased from the proceeds of the company which was owned by; Jaswant Singh Dhanjal Baldev Singh Dhanjal Narinder Singh Dhanjal Dalip Singh Dhanjal e.g Kshs.291,000,000 from Ministry at the time of execution of the settlement agreement.
30.	8493/1/MN		-Affected by Nullified Settlement Agreement, as these properties were purchased from the proceeds of the company which was owned by; Jaswant Singh Dhanjal Baldev Singh Dhanjal Narinder Singh Dhanjal Dalip Singh Dhanjal e.g Kshs.291,000,000 from Ministry at the time of execution of the settlement agreement.
31.	547/1/MN		-Affected by Nullified Settlement Agreement, as these properties were purchased from the proceeds of the company which was owned by; Jaswant Singh Dhanjal Baldev Singh Dhanjal Narinder Singh Dhanjal Dalip Singh Dhanjal e.g



			Kshs.291,000,000 from Ministry at the time of execution of the settlement agreement.
--	--	--	--

19. During the hearing, Sukhwant Kaur Dhanjal a co-administrator, simply adopted the content contained in her affidavit in support of the application sworn on 20th December 2018, witness statement filed on 26th April 2019, further statement recorded on 25th May 2021 together with supporting documents and several affidavits sworn on 14th December 2018, 11th February 2019, 2nd April 2020, 14th May 2020 and 7th May 2020. and, 10th August 2019 together with grounds of opposition. According to her, the deceased left three sons and two daughters surviving him and that the estate comprised of; properties registered in his name before he died, shares in various companies and; assets jointly registered with his brothers and held in joint tenancy in common. She listed several assets enumerated as above and urged that they be shared equally amongst the five beneficiaries.
20. On cross examination by Mr. Kibunja, she stated that most of her father's properties were in Kilifi, Kwale, Nairobi and U.K. She however confessed that she did not have titles to prove ownership and that some of them are charged to banks and others in the names of 3rd parties who allegedly acquired transfers illegally from Nirmal and Daljit.
21. On further xx-examination by m/s Wanjiku for Surjit, the witness admitted that she had no documentary proof that the deceased left 30kg of Gold at the bank of Baroda. In answer to Mr. Gathara's cross-examination, the witness stated that Daljit and their cousin Nirmal used an illegal deed of agreement to transfer properties into their names without a confirmed grant. She stated that Diani complex properties (116, 138, and 237) were illegally transferred to Daljit's name before confirmation of the grant.
22. On re-examination by Ms Kipsang (God rest her soul in eternal peace), she stated that she did not have documentation in respect of plot no.12889/161/Kilifi nor does she know where it is located.
23. On his part, Joginder Singh a co-administrator, simply supported Sukhwant's testimony. He accused Daljit of obtaining a grant in respect of their father's estate without the consent of the other beneficiaries hence illegally transferring unto himself part of the estate. He urged the court to order return of the illegally transferred properties into the deceased's name and thereafter distribute the same to the beneficiaries.
24. On his part, Daljit Singh adopted his witness statement dated 24th May 2021, together with the list of documents dated 26th May 2021 as his evidence. He also supported the supplementary affidavit sworn on 25th May 2021 by his sister Sukhwant listing a schedule of disputed assets. He denied the claim that the deceased left Gold weighing 40kg. He stated that his father had liabilities in terms of loans. On cross examination by Ms. Kipsang, the witness confirmed that the property known as Kwale/ Diani 116, 138 and 287 belonged to his father although he had taken possession of them and charged the same during his tenure as the administrator. On cross examination, he denied taking the gold deposited in the bank of Baroda.
25. On cross examination by Mr. Kibunja, he admitted taking a loan of 80million using LR. Kwale / Kinondo/670 which he had transferred to himself as the estate administrator. He stated that Dhanjal brothers was dissolved hence nothing to share. He further stated that he owned 745 shares in Dhanjal brothers Ltd by the time the deceased died and that the father had 1,125 shares. He went further to



state that he bought off the shares of his uncles after clearing 45m loan from trust bank. That Joginder his brother petitioned for the winding up Dhanjal brothers but the proceedings were thrown out and the company survived.

26. Having closed their case, parties agreed to file submissions

Joginder's (1st Administrator's) Submissions __**

27. Through the firm of Kibunja and company advocates, Joginder Singh filed his submissions on 10th February 2023. Learned counsel submitted on two issues. Firstly, whether Daljit the 1st beneficiary/1st respondent had intermeddled with the estate of the estate and secondly, whether if found culpable he should refund all the proceeds and or proceeds collected or received from the estate of the deceased. In respect of the first issue, it was submitted that during his(Daljit) tenure as the original administrator, he entered into an illegal agreement with Nirmal his cousin and uncles through which some of the estate assets were transferred into himself and to 3rd parties without the knowledge of the other beneficiaries hence intermeddling with the estate contrary to section 45 of the [law of succession Act](#). In that regard, reliance was placed in the case of Veronica Njoki Wakagoto(deceased)(2013)e KLR where the court held that any person who deals with the deceased's estate in the manner not authorized by the law or the court is guilty of intermeddling.

28. It was submitted that, the deed of settlement which was the basis of the said illegal transfers having been nullified by the court and Daljit ordered to account fully for the estate assets and the transferred properties reverts back to the estate, he should be held accountable for the mess that befell the estate. That he accounts for the estate's property between 2007 and 2016. That despite being ordered to file a full statement of accounts, Daljit has been reluctant hence an act of contempt of court punishable by law. In that regard reference was made to the case of Econet wireless Kenya limited v Minister for information and communication of Kenya &another (2005) KLR where the court held that for the maintenance of the rule of law, order, and dignity of the court, court orders must be obeyed.

29. The court was therefore urged to identify the estate assets, restore them to the original position before the voided agreement came to force and distribute the same. Counsel listed a list of disputed properties most of which are in the various companies' names, jointly owned with the deceased's brother and some in his name to revert to the original positions before being shared out.

30. Counsel further listed properties the said Daljit transferred into his names and later charged the same without the knowledge of the other beneficiaries. Counsel submitted that Daljit should account for 30kg of Gold collected from the bank of Baroda and rent collected from and received from properties jointly owned by the deceased and his brothers.

Submissions for Daljit and Surjit (1st and 2nd beneficiaries/ respondents)

31. Through the firm of Wanjiku and company advocates, the 1st and 2nd beneficiaries /1st and 2nd respondents, filed their submissions on 20th March 2023. Counsel submitted on three issues namely; whether the properties listed in the application for confirmation were free property for distribution; whether the court can grant further orders for confirmation of grant sought and which reliefs can be granted in the circumstances.

32. Learned counsel took the court through the historical background of these proceedings and thereby contended that the court can only distribute free property of the deceased under section 3 of the [law of succession Act](#) including shares in companies but not deal generally with companies' properties. That this court lacks capacity to deal with properties belonging to a company save for shares upon proof



- that the deceased owned them. Regarding the existence of Gold, counsel submitted that there was no proof that the property existed and who was given the same by the bank where it was allegedly stored.
33. Regarding 100m money allegedly held by DTB, counsel contended that there was no proof. Touching on surrender of title documents, counsel submitted that there was no proof that she held them. As concerns the allegation that Daljit borrowed huge sums of money on behalf of Dhanjal brothers, thus overburdening the estate, it was contended that that is an issue for another jurisdiction and not the probate court.
 34. As concerns the legality of a partial confirmed grant and whether a second one can apply, counsel contended that a second confirmation can not issue out of the same grant hence the court is functus official. In that regard the court was referred to the holding in the case of *In re estate of Kiberenge Mukwa (deceased)*(2021)e KLR
 35. Turning to issue number three regarding the reliefs sought among them finding the said Daljit guilty of contempt and intermeddling with the estate, counsel was of the view that it is spent as the applications are overtaken by events upon hearing the protest application viva voce.

Submissions by Jaspal Kaur Nagi (3rd beneficiary/3rd respondent)

36. Through Waithaka and company Advocates, Jaspal a daughter to the deceased who unfortunately has since died, submitted that the current administrators have failed in their duties by failing to distribute assets that are not disputed and which were distributed through a confirmed grant by the consent of all beneficiaries. That one Joginder cannot claim that he did not participate in signing the voided agreement yet he signed the same on 25th November 2005. Counsel contended that prior to Daljit petitioning for the grant, the rest of the beneficiaries who are his siblings had renounced their entitlements in respect to the estate.
37. Regarding the aspect of citing Daljit for intermeddling with the estate and ignoring the court orders in place and therefore guilty of contempt of court, counsel contended that the same is resjudicata as the court had dealt with it in its ruling dated 13th October 2016 whereby it was held that the punitive orders sought were not in the interest of the family cohesion.
38. Counsel submitted that the administrators can not distribute company property nor properties which the deceased did not own at the point of his death. In that regard, the court was referred to Section 3 of the [law of succession Act](#) and the case of *Pacific Frontiers Seas LTD v Kyengo & another* (2022) KECA 396(KLR) where the court held that where there is a dispute over company shares, a probate court has the jurisdiction to distribute the same. Counsel further submitted that the administrators did not specify the deceased's free property that was not included and distributed in the partial confirmation.
39. It was argued that the burden of proof lies with the party desiring entry of judgment in his favour. Reliance was therefore placed in Section 107 of the [Evidence Act](#). In conclusion, it was urged that there was no proof that the disputed properties were free properties capable of distribution.

Submissions by Nirmal the 1st interested party's submissions

40. Through Githara and company advocates, the 1st interested party filed his submissions on 4th April 2023. It was submitted that the inclusion of Nirmal into these proceedings was the voided deed of agreement in which he was one of the executors and implementors of the agreement whose effect was the exchange of properties between the deceased's family and his brothers. According to counsel, nothing can be done without first ceding those properties benefitted by the deceased's family under



the voided agreement. That the court cannot avoid referring to the voided agreement when restoring assets to their original position.

41. According to counsel, this court must first ascertain whether there are free properties available for distribution. In his view there is none. To buttress that argument, counsel relied in the case of *Mpatinga Ole Kamuye vs Meliyo Tipango & 2 others* (2017) eKLR.
42. It was submitted that the administrators can not be allowed to sell or transfer properties belonging to the companies. That Joginder Singh should first account for the estate since he took over the role of administering the estate pursuant to section 83 of the *law of succession Act* failure to which the grant be revoked. To support that proposition, the court was referred to the case of *In re estate of Julius Mimano* (deceased) (2019) eKLR.

Submissions for the 2nd interested party -Dhanjal brothers limited

43. The 2nd interested party through Kadima and company advocates filed submissions on 13th June 2023 principally submitting that a probate court can not arbitrate over company assets. In that context, counsel referred to the holding in the case of *Estate of Gitere Kahura & another* (both deceased) (2018) eKLR and *Estate of Charles Karuga Koinange* (2017)e KLR. Counsel submitted that in the obtaining circumstances, only company shares are available for distribution and not company properties.
44. It is worth noting that the second administrator did not file submissions but instead counsel associated themselves with the 1st administrator's submissions filed by Kibunja.

Determination

45. I have considered the application herein, responses thereof and rival submissions by counsel. Issues that crystalize for determination are;
 - a. Whether the deed of settlement agreement dated 9-3-2006 purportedly entered between Daljit representing the estate herein and Nirmal representing the deceased's surviving brothers was valid.
 - b. Whether the listed properties in the application for confirmation herein were free properties owned by the deceased hence capable of distribution;
 - c. Whether this court can issue another certificate of confirmation in place of the partial certificate of confirmation of grant;
 - d. Whether company properties can be distributed to the beneficiaries.
 - e. Whether Daljit is guilty of intermeddling with the estate
 - f. Whether Daljit is in contempt of court orders.
 - g. Whether administrators are duty bound to render a full statement of accounts in respect of the estate for the period they were in charge.
46. From the onset, I wish to express my disappointment regarding the manner in which wealth of a deceased person earned through hard work can be plundered by the survivors who in most cases have no idea how the subject property was earned. Unfortunately, in this case, it is the children of the deceased who chose a wrong path of unwarranted litigation thus subjecting their father's estate into unprecedented waste due to sheer greed and dishonesty.



47. On the issue raised by Gathaara Advocate contending that the deed of settlement entered on 9-3-06 in which parties entered into an agreement to exchange properties jointly owned by the deceased and his surviving brothers without going through full succession cause proceedings is still relevant, I do not agree. This court has since settled the issue of the void agreement and the same upheld by the court of appeal as being null and void. I do not see the relevance of the same as any transaction entered using the illegal agreement is null and void abinitio hence must be overturned. Consequently, any properties belonging to the deceased and affected by the nullified deed of settlement must revert back to their original position that is to say, to the original owner in this case the deceased.
48. It is not in dispute that the deceased herein died intestate leaving five survivors all of whom were his children. Apparently, the beneficiaries know their rightful shares which is 1/5 of the estate which is basically, equal share. This ratio was applied in the partial confirmation of the grant to which parties have no question. However, the most contested issue is which properties are available for distribution.
49. It is trite that a court can only distribute free property belonging to the deceased as at the time of his death. This position is clearly provided under Section 3 of the *Law of Succession Act* which defines free property as the property which that person was legally competent freely to dispose during his lifetime, in respect of which his interest has not been terminated by his death. See *In re Estate of Lucy Muthoni Obat (deceased)(2021) ECLR*. It then follows that properties which the deceased could not freely or legally qualify to dispose during his lifetime had he survived cannot be the subject of distribution in respect of his estate.
50. In the circumstances of this case, parties have agreed on a number of properties culminating to issuance of a partial confirmed grant. On the other hand, parties have disagreed on several assets especially those assets registered in the names of various companies. Before I proceed further, I wish to address the most contentious issue on the status of assets registered in the names of a company and whether it is subject to distribution. It is trite that a company is a legal entity capable of suing and being sued hence an independent person in law. See *Salmon V Salmon (1897) A.C.22* where the court held that it's a principle of law that a distinction must be drawn between the company and its directors and shareholders, as the company is a separate legal entity.
51. Where a company is associated with the deceased's estate, the jurisdiction of the probate court lies with distribution of the shares, but not the liquidation of the company or distribution of its assets, which belong to the company. This was the position held in the case of *Pacific Seas Ltd Frontiers vs Chengo and another (supra)* and in the *Estate of Gitere Kahura (deceased) (2018) eCLR* where the court held that, the fact of being shareholders in the company did not constitute them owners of the property of the company.
52. Similar position was held in *Victor Mabachi and another v Nurtum Bates Ltd (2013) eCLR* where the court held;
- “A company is a body corporate, is a personal juridical, with a separate independent identity in law, distinct from its shareholders, directors and agents unless there are factors warranting the lifting of the veil”
53. In the *re Estate of Shahid Pervez Butt(deceased)(2022)e CLR*, the court of appeal held thus;
- “Therefore, the answer to issue number two raised herein above is that the estate property must be limited to the shares the deceased held in the companies established in the documentation availed before us in this case”.



54. Guided by the above case law, I have no doubt the law is settled to the extent that a company being a legal entity has a laid down mechanism under the companies' Act and by extension Articles of Association and Memorandum of Association to dispose companies' assets. However, the only interest an estate of a deceased person has in a company is ownership of shares and therefore has the right to distribute such shares and not the assets or company property. With that legal position in mind, it is my finding that the estate of the deceased is only entitled to the shares of the respective companies listed herein as comprising the estate. This court therefore holds that the disputed assets of the various companies listed in the application for confirmation are not capable of distribution as they are not free property of the deceased' estate save for shares in those companies.
55. Having settled that question, the next issue is whether this court has jurisdiction in law to distribute the estate and thereafter confirm the grant for the second time bearing in mind that there is already a partial confirmation of grant. This issue was raised by Ms. Wanjiku who submitted that there is no law for confirmation of a grant twice. In the case of *In re The matter of The Estate Of Michael Kimando Mwangi(deceased) (2016) eKLR* the court had to partially confirm the grant to accommodate urgent distribution of part of the estate in the interest of justice to accommodate access of funds in the bank to be able to pay school fees for the children. The court expressed itself as follows;
- “It follows therefore that the grant can not be confirmed as it is because it does not deal with all the entire estate. However, owing to the special circumstances of this case, that is the need to pay the minor's fees, I find that it is in the interest of justice to partially confirm the grant in terms of the proposal that was agreed upon by the beneficiaries as contained in the general form that was attached to the application”
56. Although the law does not expressly provide for partial confirmation of a grant, it has been accepted generally by virtue of long period of practice that in the interest of justice a court clothed with inherent powers under section 47 of the *law of succession Act* and rule 73 of the P & A rules of the succession Act can make any orders that meet the ends of justice. It will not make sense for the court to hold at ransom $\frac{3}{4}$ of an estate whose distribution is not contested because of one contested asset that will require length viva voce evidence. I do hold that partial confirmation of a grant is not illegal as the succeeding fully confirmed grant only needs to amend the certificate of confirmation and not the grant itself. In my view therefore, the grant partially confirmed was proper in law.
57. On the question whether Daljit is guilty of contempt of court orders, m/s Wanjiku submitted that the court having ordered for the matter to proceed fully by way of viva voce evidence, the pending application regarding contempt proceedings was overtaken by events hence spent. There is no dispute that there is a pending application for contempt of court which has not been argued and determined. The application was meant to serve a specific purpose which is still pending. Hearing of the protest did not vitiate the objective of contempt proceedings. I cannot make any substantive order on the contempt application which has not been argued specifically. I will simply say, the application is not spent hence a live for disposal if parties so decide to pursue it.
58. Concerning intermeddling, the court dealt with the matter through its ruling of 13th October 2016 thereby acknowledging that for the shake of harmony in the family, it was necessary to move forward. It is obvious that after nullifying the agreement, all actions emanating from the voided agreement were illegal and technically amounted to intermeddling with the estate. However, the court having extended pardon on that aspect, I need not go further and the issue should rest there.
59. Regarding the question of the administrators producing and filing full and accurate statement of accounts, it is a mandatory requirement under section 83 (e) and (f) of the *law of succession Act*. I make



reference to the court ruling/order of 11-10-2016 whereby the court ordered Daljit to produce a full and accurate statement of accounts after he was stripped off his administration duties and subsequently production of various documents which he and his advocate failed.

60. However, Daljit should comply with that order by filing statement of accounts reflecting the estate's operations during his tenure as the administrator from the date of appointment as administrator up to the time the new administrators took over. In the same vein, Joginder and Sukhwant should produce and file a full statement of accounts regarding their dealings with the estate from the date of appointment to date.
61. Regarding the question of liabilities due and owing from the estate of the deceased, they must be ascertained by the administrators, cleared and then distribute the net intestate estate. I however, do caution that, liabilities incurred in the names of companies will be settled by the relevant companies under the relevant laws among them the *companies Act*
62. I will now turn to the listed disputed properties. A Total of 31 assets were listed by Sukwant and Joginder the current administrators. It is worth noting that those assets were registered in the various companies' names which in law are independent legal entities. This court has no capacity to order distribution of the company assets save for the shareholding therein which is not disputed. On that ground alone, I will only distribute the shares held by the deceased in those companies as at the time of his death. That is what constitutes the free property of the estate and therefore available for distribution. Any distribution of those shares in the listed companies pursuant to the voided deed of agreement is null and void.
63. For the properties which were registered or held in the deceased's name prior to his death but which Daljit transferred into his name allegedly in obedience to the voided agreement, they should revert back to the name of the deceased and then be distributed equally amongst the five beneficiaries.
64. As stated earlier, the grant was confirmed partially based on uncontested properties. I will not delve on those assets save to add that Daljit and his counsel should surrender all necessary ownership documents in their possession as ordered by the court earlier to facilitate transfer of the shares due to the beneficiaries. In default, the court shall be at liberty to direct the relevant registries to effect transfers non-surrender of the affected documents notwithstanding.
65. Regarding the question of 30 or 40 kg of gold allegedly deposited in the bank of Baroda, no one call evidence from the officials or manager of the relevant branch to confirm whether there was gold deposited in their bank and if so, where is it or to whom was it released. Since Daljit has denied receipt of such Gold, it was incumbent upon the current administrators to tender evidence to that effect.
66. However, since this is a serious allegation bordering on theft by conversion, I will direct that the DCI Mombasa County investigates the complaint and take appropriate action. If the bank of Baroda confirms that the said gold was deposited and later released to Daljit, then Daljit shall be held accountable and his share entitlement from the estate shall be reduced to the extent of the value of the Gold received and unaccounted for. The current administrators have the liberty to sue Baroda bank on behalf of the estate for the recovery of the said gold.
67. In a nut shell, the application for confirmation of the grant in full is allowed and the grant confirmed with the estate thus distributed as follows.

Schedule



Name	Description of properties	Share of Heirs
Jaspal Kaur Nagi Joginder Singh Dhanjal Surject Singh Dhanjal Daljit Singh Dhanjal Sukhawant Kaur Dhanjal Kundi Jaspal Kaur Nagi Joginder Singh Dhanjal Surejeet Singh Dhanjal Daljit Singh Dhanjal Sukhwant Kaur Dhanjal Kundi	Kwale/Diani Complex/116 Tiwi Kwale/Diani Complex/138 Tiwi Kwale/Diani Complex/287 Tiwi Plot No. 12889/161, Kilifi ¼ Share of Plot No. Msa/Block X/377 ¼ Share of Plot No. Msa/Block XIII/55 ¼ Share of Plot No. Msa/Block XIX/134 ¼ Share of Plot No. Msa/Block X/30 ¼ Share of Plot No. 8732/I/MN 1125 Shares at Dhanjal Brothers Ltd 1250 Shares at Express Holdings Ltd 1 Share at Chempac Ltd 1 Share at Whitehard Holdings Ltd 1 Share at Idolo Enterprises Ltd 1 Share at Chania Estuary Developers Ltd 1 Share at Merryfield UK Ltd 18,750 Shares at Dhanjal Investments Ltd 1 Share at Coast Projects Ltd 1 Share Waterbeach Investments Ltd 1 Share Pesce Enterprises Ltd 125 Shares Dhanjal Properties Ltd Money held in deceased's account Bank of Baroda, Mombasa Branch	1/5 Share each less any money owed by any beneficiary to the Estate 1/5 Share each less any money owed by any beneficiary to the Estate

68. I wish however to add that incase of any property belonging to the estate whose ownership is not established or can not be ascertained, the same can be included later after ascertainment and the certificate of distribution amended accordingly. The same shall apply to the unascertainable gold that is in dispute.
69. Regarding properties in UK and other jurisdictions, they can apply for adoption of this grant and then have the assets in those countries distributed.
70. In summary therefore, the following orders shall apply;
- a. That the grant of letters of administration issued herein on 31st October 2018 and partially confirmed on 11th June 2019 and issued on 14th 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 and whose whereabouts is not known and take appropriate action incase of theft or fraud involving the same.
- f. That the estate is only entitled to distribution of shares held by the deceased in the companies where he was the share-holder.
- 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 on 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.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH DAY OF MAY 2024.

.....

J. N. ONYIEGO

JUDGE

