



REPUBLIC OF KENYA



In re Estate of Malik Kumudchandra Acharya (Deceased) (Succession Cause 2203 of 2001) [2024] KEHC 10500 (KLR) (Family) (29 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10500 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2203 OF 2001
H NAMISI, J
AUGUST 29, 2024
IN THE MATTER OF THE ESTATE OF MALIK
KUMUDCHANDRA ACHARYA (DECEASED)
AND
IN THE MATTER OF AN APPLICATION FOR REVOCATION OF
GRANT OF PROBATE BY HASSANALI ALIMOHAMED DAMJI**

RULING

1. Before the Court are two applications; Petition for Letters of Administration de bonis non with Will Annexed and Assets Unadministered dated 19 September 2023 and Summons for Revocation of Grant of Probate dated 17 November 2023.

Background

2. The Deceased passed away on 4th August 2001, leaving a written Will dated 21 November 1986 in which she appointed Sadrudeen Kara Teja alias Sadrudin Kara Teja as Executor and Trustee of her Will. At the time of Deceased's death, the Executor was residing in Vancouver, Canada. He appointed his Advocate, Hassanali Alimohamed Damji, based in Nairobi, as his Attorney to apply for and obtain the Grant of Probate of the Estate of the Deceased. The Grant was confirmed on 3rd July 2002.
3. Sadrudeen Kara Teja passed away on 6th March 2010, effectively terminating the Power of Attorney to Hassanali Mohamed Damji. Unfortunately, by the time of his demise, a part of the estate of the Deceased herein remained unadministered.

The Petition

4. The Petition dated 19 September 2023 is brought by Jehan Khanum Schmitz alias Khanum Schmitz, A sister to Deceased. The Petitioner seeks Letters of Administration de bonis non with respect to the unadministered assets of the estate. The Petition is supported by an Affidavit in which the Petitioner



avers that at present, the Deceased is survived by 3 siblings, including the Petitioner. The other two siblings, Abu Talib Teja and Mehrunissa Virani, have renounced their respective rights to petition for the Letters of Administration. Annexed to the Affidavit are the signed renunciations dated 19 September 2023.

5. In the Will, the Deceased appointed Shahsultan Hassan Kassam as Executrix and Trustee in the event that Sadrudeen Kara Teja shall have predeceased the Deceased herein. It is the Petitioner's averment that Shahsultan Hassan Kassam predeceased the Deceased.
6. The Petitioner has listed the unadministered assets and liabilities of the deceased which are parcel of land in Kwale County and council rates in respect of the said property, respectively.

Summons for Revocation

7. The Summons for Revocation filed by Hassanali Alimohamed Damji, seeks the following orders:
 - i. That the Grant of Probate made to the said Hassanali Alimohamed Damji as the Executor of the estate of the Deceased herein on the 13 day of November 2001 and confirmed on 3rd day of June 2002 be revoked;
 - ii. That the application being made by Jehan Khanum Schmitz for issue of the Letters of Administration de bones non with Will Annexed of the Estate unadministered of the Jehan Khanum Schmitz (sic!) be processed as soon as possible;
 - iii. That the costs of this application be in the cause.
8. In his Affidavit in support of the Summons, the Applicant/Advocate avers that following the demise of the Grantor of the Power of Attorney, the said Power of Attorney comes to an end. Annexed to the Affidavit is a copy of the Death Certificate of Sadrudin Teja.

Analysis and Determination

9. In Black's Law Dictionary, 'de bonis non administratis' means of goods not administered. This is applicable in a situation where an administrator is appointed to succeed another, who has left the estate partially unsettled.
10. Rule 20 of the 5th Schedule to the *Law of Succession Act* provides that in the case where an executor to whom probate has been granted has died, leaving a part of the testator's estate unadministered, then a new representative may be appointed for the purpose of administering such part of the estate. Rule 18 of the *Probate & Administration Rules* provides for the renunciation of probate or right to apply for administration.
11. The Applicant herein has presented sufficient grounds for revocation of the Grant issued to him. Similarly, the Petitioner has presented sufficient reason why the Grant should be made to her, bearing in mind that the other two persons who are entitled to make the same application have since renounced their right. In the circumstances, and to expedite the conclusion of the administration of the estate of the Deceased, I make the following orders:
 - i. The Grant of Probate made to the said Hassanali Alimohamed Damji on the 13 day of November 2001 and confirmed on 3rd day of June 2002 is hereby revoked;
 - ii. The Petition for Letters of Administration de bonis non dated 19 September 2023 is allowed;
 - iii. Letters of Administration de bones non with Will Annexed of the Estate unadministered to issue to Jehan Khanum Schmitz alias Khanum Schmitz;



iv. Costs in the cause

DATED AND DELIVERED AT NAIROBI THIS 29 DAY OF AUGUST 2024

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Ms. Akello & Mr. Damji.....for the Applicants

Applicant present

