

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

SUCCESSION CAUSE NO 29 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE

KIRITKANT MOTICHAND RAICHAND SHAH (DECEASED)

VIREN KIRITKANT MOTICHAND SHAH.....APPLICANT

RULING

1. The deceased herein died intestate on 16th November, 2011 leaving behind Alka Kiritkant Motichand Shah (widow) and Viren Kiritkant Motichand shah(son) as the only survivors and therefore beneficiaries to the estate. Among the assets left behind are shares in Oceanview Maisonettes Ltd and Pristine Management Ltd. On 7th February 2012, the widow petitioned for a grant of representation. The same was granted on 25th May, 2012 and issued on 28th May 2012.

2. Since 28th May, 2012, the file remained dormant with no action being taken to facilitate confirmation of the grant. Consequently, the court issued notice to show cause why the grant could not be revoked under Section 73 for want of prosecution. The applicant having failed to turn up, the court revoked the grant on 22nd September 2017 under section 76 (d)(i) of the Law of Succession Act.

3. Upon discovering that the grant had been revoked, Viren Kiritkant Motichand Shah a son to the deceased moved the court vide a Chamber Summons dated 21st April, 2021 seeking orders that; the orders of 22nd September, 2017 revoking the grant and closing the file be set aside; upon setting aside the said orders, the grant issued to Alka Kiritkant Motichand Shah on 25th May,2012 be revoked as the same has become useless and inoperative; upon revocation, a fresh grant do issue to the applicant and the same be confirmed.

4. The application is based on grounds set out on the face of it and an affidavit sworn on 21st April, 2021 by the applicant. Basically, the applicant's case is that, the cause for the delay in prosecuting the case was occasioned by the death of his mother the sole administratrix on 25th February, 2016. That by the time the grant was revoked the holder of the grant had already died. That he was not aware of the notice to show cause. He further stated that the grant has since become inoperative and useless hence the need for a fresh one to issue to him as the sole beneficiary and therefor administrator.

5. I have considered the application herein and the affidavit in support. It is clear from the attached death certificate of Alka Kiritkant Motichand Shah that the administratrix in this file died on 25th February, 2016. Apparently, there is no proof that the notice to show cause against which the grant was revoked and file closed was served upon any beneficiary. The administrator had since died hence the notice to show cause could not have been served upon her. For that reason, I am satisfied that there is sufficient ground to set aside the orders of this court made on 22nd September, 2017 and reinstate the petition and the grant thereof.

6. However, taking into account that the sole administratrix is deceased, under section 76 (e) of the Law of Succession, the grant has become useless and inoperative. Accordingly, the same is revoked and a grant of letters of administration debonis non to issue to the applicant the only surviving beneficiary as the sole administrator. Upon issuance of the said grant, the administrator to apply for confirmation of the grant.

Order accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 30TH DAY OF JUNE 2021

J. N. ONYIEGO

JUDGE