

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 351 OF 2018

IN THE MATTER OF THE ESTATE OF SAVITABEN BHARATKUMAR SHAH (DECEASED)

KALPA NITESH BHARATKUMAR SHAH.....PETITIONER

RULING

1. The deceased died on 20th January 2018 in the United Kingdom. At the time of her death she was domiciled in the United Kingdom. According to the petition for a grant of probate of a Will which has been lost or mislaid since the testator's death filed by the petitioner on 20th March 2018, the deceased left a Will dated 3rd October, 2002. A copy of the Will was annexed to the petition.

2. In the affidavit in support of the petition, the petitioner stated that she was the daughter –in-law of the deceased and the only surviving executor named in the Will. The other executors were Bharatkumar Dharamshi Ranmal Shah who died on 4th October 2011 and Nitesh Bharatkumar Shah who died on 28th November 2002. She undertook to faithfully administer according to law all the estate which by law devolved upon and vested in personal representatives of the deceased and to render a just and true account of such estate wherever required by law, and to, when required by this court, deliver up thereto the said Will.

3. The procedure for the application of a grant of probate of a Will is provided for under **Section 51(1) (3)** of the **Law of Succession Act** as follows:

“Where it is alleged in an application that the deceased left a valid Will:-

a) If it was written, the original Will shall be annexed to the application, or if it is alleged to have been lost, or destroyed otherwise than by way of revocation, or if for any other reason the original cannot be produced, then either –

i) an authenticated copy thereof shall be so annexed; or

ii) the names and addresses of all persons alleged to be able to prove its contents shall be stated in the application;

4. In the present petition, the copy of the Will attached is not authenticated as required by **Section 51(1) (3) (i)** of the Act. The petitioner did not also provide any names and addresses of other persons able to prove the contents of the Will as required by **Section 51(1) (3) (ii)** of the Act.

5. There is also an issue of names of the executors being misspelt, as stated in the affidavit in support of the petition. There is need for an independent person, preferably from the family of the deceased, to confirm that the persons referred to in the copy of the Will are same as those referred to at paragraphs 8, 9 and 10 of the affidavit in support of the petition.

6. Until the conditions set out in **Section 51(1) (3)** of the **Act** are fulfilled, and until such clarification is given as to the names and identity of the executors, the present petition is declined.

DATED and SIGNED at NAIROBI this 30th day of MAY 2018

A.O. MUCHELULE

JUDGE