



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 366 OF 2012**

**IN THE MATTER OF THE ESTATE OF GOOLAMHOOSAIN MANJEE KESHAVJEE**  
**(DECEASED)**

**RULING**

1. The applicant herein Amynmohamed Akberalli Keshavjee moved this court through Summons for Revocation or Annulment of grant dated 4<sup>th</sup> September 2017 seeking orders as follows:

**a) That a grant of probate of written Will of the estate of Goolamhoosain Manjee Keshavjee (deceased) made to the above Akberralli Goolam HoosainKehsavjee in this matter on 5<sup>th</sup> September 2012 be revoked.**

**b) That the honourable court do issue grant of letters of administration de bonis non with the will to Amynmohamed Akberali Keshavjee.**

**c) That the honourable court do thereafter confirm the grant of letters of administration de bonis with Will with the estate to be distributed in accordance with the Will of Goolamhoosain Manjee Keshavjee (deceased).**

**d) That the costs of this application be in the cause.**

2. Application is premised on the affidavit in support sworn on 10<sup>th</sup> January 2017 by the applicant in person.

3. Before I proceed with the determination of the application herein, a brief summary of the facts surrounding the estate herein will suffice. The estate herein relates to one Goolamhoosain Manjee Keshevjee hereinafter referred to as the deceased who died testate on 23<sup>rd</sup> May 1999 in Canada having executed a written Will dated 29<sup>th</sup> May 1983 with Mr. Akberali Goolam Hoosain Keshavjee as the sole executor.

4. The said executor sought representation on 22<sup>nd</sup> February 2012 and a grant of probate of written Will was made to him on 5<sup>th</sup> September 2012. According to the affidavit in support of the petition sworn on 6<sup>th</sup> January 2012, the executor expressed that the deceased was survived by himself (executor) as the sole dependant.

5. According to the Will, the deceased bequeathed into his son the executor herein all his estate and effects movable or immovable, where the same be in possession, reversion, remainder or expected. Among the assets listed by the executor in his affidavit in support of the petition are 3,722 shares with Diamond Trust Bank of Kenya Limited, 7,200 shares at Jubilee Holdings Ltd. and 1,000 shares at Kenya

Airways to totaling to an estimated value of Kshs.1,502,374/=.

6. Before the grant would be confirmed, the petitioner (executor) died on 12<sup>th</sup> August 2012 while in Canada leaving part of the estate un administered thus culminating to the instant application by the current applicant. Prior to the filing of this application, the applicant had filed a succession cause before court of Justice in Ontario Canada as the sole executor and a grant issued to him on 21<sup>st</sup> May 2015 in respect of the estate of Akberalli Gooram Hoosain Keshavjee and subsequently got resealed in Kenya on 6<sup>th</sup> October, 2016 vide Succession Cause No. 1092/2016 Milimani Court.

7. In essence, the deceased herein left a son one Akberalli Goolam Hoosain Keshevjee as the sole beneficiary who in turn died before completing administration of the estate leaving the applicant herein as the sole executor and beneficiary of his estate.

8. The applicant is therefore seeking the revocation and or annulment of the grant of letters of probate with written Will issued to Akberalli Goolam Hoosain Keshavjee now deceased. In law, a grant limited de bonis non is normally issued for purposes of completing administration of estates in situations where the previous administrator has failed to complete administration of the estate for whatever reason including the administrator's death.

9. The key issue for determination is whether the grant in its current form is inoperational and or incapable of implementation pursuant to the death of the sole executor (administrator) and whether the circumstances are such that it can be revoked or nullified. Grounds for revocation and or annulment of a grant are succinctly set out under Section 76 of the Law of Succession inter alia; where proceedings in obtaining the grant are defective, fraud, false statement or concealment of material facts by the petitioners or where no grant is not confirmed after one year, failure to act diligently or failure to give a true account or inventory of the estate and lastly (paragraph -e) the grant has become useless and inoperative through subsequent circumstances.

10. In my view, the relevant part in the instant application and circumstances is Section 76 (e) of the Law of Succession and rule 44 of the P & A rules and rule 16 of the 5<sup>th</sup> schedule considering that the executor died before completing the administration of the estate. In the absence of the executor, the grant which is inoperative and useless. The estate cannot be left unadministered forever. **(See- in the matter of the estate of Mwangi Mugwe alias Elieza Ngware (deceased) and in the matter of the estate of Mary Wairimu Ngware (deceased) Nairobi H.C.succession no.2018 of 2001 and in the matter of the estate of Githaiga Gichuki (deceased) (2014) eKLR.**

11. Is the applicant the right person to apply for the grant in the circumstances? The person who is entitled to administer the estate of a deceased testator in the absence of an executor are clearly stated in Sections 63, 64 and 66 of the Law of Succession. Such persons include according to the order of priority a residuary legatee, a personal representative of universal legatee, persons entitled in intestacy, the public trustee and creditors.

12. In the instant case, the deceased (testator) left a sole executor who was also the sole dependant and survivor. The executor also died leaving a sole executor and beneficiary who took out the grant of representation in the court of Justice at Ontario in Canada in which he was named as the sole dependant and executor of the estate of the deceased executor herein.

13. I have no doubt that the applicant herein is the right person to apply for a grant of letters of administration de bonis non for purposes of completing the administration of the estate herein. There are no other known persons or beneficiaries entitled to the estate so as to require issuance of notice as provided under rule 26 (2) of the P & A rules.

14. Although no specific provisions of the law under which the application was filed was quoted, the circumstances and nature of the heading of the application is self-explanatory and under Article 159 (2) (d) of the constitution, justice shall be dispensed without undue regard to technicalities. In the circumstances, application herein is allowed with orders as follows:

**(1) That the grant of probate of written will of the estate of Goolamhhosain Manjee Keshavjee (deceased) made to one Akberalli Goolam Hoosain Keshavjee now deceased on 5<sup>th</sup> September 2012 be and is hereby revoked.**

**(2) That a grant of letters of administration de bonis non with Will to Aymnmohamed Akberali Kesharjee do issue.**

**(3) That the new administrator shall file a fresh application for confirmation of grant.**

**(4) That there shall be no order as to costs.**

**SIGNED, DATED AND DELIVERED AT NAIROBI ON THIS 8<sup>TH</sup> DAY OF DECEMBER, 2017.**

**J.N. ONYIEGO (JUDGE)**

In the presence of

.....Counsel for Applicant

.....Court Assistant