

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

PROBATE AND ADMINISTRATION DIVISION

SUCCESSION CAUSE NO. 60 OF 1987

IN THE MATTER OF THE ESTATE OF BHARATI TRIKHA Also known as BHARATI SHYAMLAL TRIKHA BHARDWAJ (DECEASED)

MEERA SHARMA)

DR. JAYA SAILESH JANI).....APPLICANTS

R U L I N G

1. Before me for determination is the application dated 28th October, 2015. It is brought under **Section 76(e)** of the **Law of Succession Act** and under **Rule 44(1)** of the **Probate and Administration Rules**. It seeks for the revocation of the grant of probate of Written Will issued to Bharat Bhushan Bhardwaj and Dr. Shyam Lal Trikha, the executors of the deceased's Will, on 16th October, 1987. It also seeks for removal of Dr. Shyam Lal Trikha, who has since died and Bharat Bhushan Bhardwaj who is elderly as Executors.
2. It is brought at the instance of **Meera Sharma** and **Dr. Jaya Sailesh Jani**, the deceased's daughters, who swore a joint affidavit on 28th October, 2015 in its support. They state that one of the Executors of the Will, Dr. Shyam Lal Trikha, who was their father, died on 2nd March, 2008. He is said to have died before the administration of the Estate was completed. The other Executor of the Will Bharat Bhushan Bhardwaj, is said to have consented to the proposal to have the grant revoked. He filed a statutory declaration on 26th October, 2015 to that effect.
3. The Applicants averred further that the parcel of land known as L.R. No.4955/58IX (L.R. No. 12527/5) being one of the assets of the Estate has not been distributed, for reason that the original title cannot be traced. That the charge registered on it in favour of Kenya Commercial Bank Limited remains un-discharged hence the need to have the new executors deal with the matter and distribute the assets.
4. Other than the Applicants, the deceased is said to have two other daughters; Dr. Sheila Khanna and Dr. Gita Prakash who live in the United States of America and who have an equal or prior right to seek a fresh grant of representation. They too have consented to the Applicants' application for the revocation of the grant through their statutory declarations dated 17th August, 2015 and 8th September, 2015 respectively.
5. Mr. Bowry submitted for the Applicants that Dr. Shyam Lal Trikha, one the Executors died on 2nd March, 2008 before the Administration of the Estate was complete. That the remaining Executor Bharat Bhushan Bhardwaj is not in a position to complete the administration of the Estate on account of illness and inability to further perform the duties of a personal representative. That the Estate has property known as L.R. No.4955/58/IX (L.R. No. 12527/5) as one of its assets which has not been distributed.
6. Among the grounds upon which the court may exercise the power of revocation of a grant as provided under **Section 76** of the **Law of Succession Act** is **section 76(e)** which states as follows:

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion: that the grant has become useless and inoperative through subsequent circumstances.”

Mr. Bharat Bhushan Bhardwaj, who is the sole surviving executor, is said to be unable to complete the administration of the Estate due to infirmity arising out of old age and illness.

7. Mr. Bhardwaj made a statutory declaration confirming that he has been unable to continue with the distribution of the Estate and in particular the distribution of L.R. 4955/58/IX (LR No.12527/5). He is therefore in favour of the Application to replace him as an executor of the deceased's Estate. The two other beneficiaries of the Estate are also in support of the appeal. The application is therefore unopposed.
8. Upon careful consideration of the grounds of this application and the facts pertaining to the Estate, the court is satisfied that in the circumstances of this Cause the grant of probate of Will issued to Bharat Bhushan Bhardwaj and Dr. Shyam Lal Trikha on 16th October 1987 has become useless and inoperative through subsequent circumstances. The application is found to have merit and in the exercise of its discretion the court hereby revokes the said grant. A fresh grant is hereby ordered to issue to the Applicants to enable them administer the part of the Estate that remains un-administered.

It is so ordered.

SIGNED DATED and DELIVERED in open court this **22nd** day of **April 2016**.

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L. A. ACHODE

JUDGE