



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.253 OF 1995**

**IN THE MATTER OF THE ESTATE OF DHANJI GOVIND (DECEASED)**

**KISHOR DANJI BORKHATARIA..... APPLICANT**

**VERSUS**

**PRABUDHAS DHANJI BORKHATARIA..... RESPONDENT**

**RULING**

Dhanji Govind, the deceased to whose estate these proceedings relate died on 11<sup>th</sup> August 1993. The deceased has prior to his death written a Will. The Will is dated 12<sup>th</sup> August 1975. In the Will, the deceased appointed his wife, Jiviben and his two sons Chandulal Dhanji and Prabudhas Dhanji to the executors of his Will. On 6<sup>th</sup> February 1995, Prabudhas Dhanji (the Respondent) petitioned this court to be issued with a grant of probate of written Will in respect of the estate of the deceased. Annexed to the petition, was the said written Will of the deceased. This court issued the grant of probate on 27<sup>th</sup> March 1995 subject to the condition that the power to prove the Will be reserved for the other living executor, Chandulal Dhanji. The grant of probate was confirmed on 24<sup>th</sup> April 2003. A certificate to that effect was issued on 25<sup>th</sup> April 2003. According to the said certificate, the properties that comprise the estate of the deceased would be distributed in accordance to the wishes of the deceased in his last written Will.

It appears that some of the beneficiaries have not benefited from the distribution of the estate of the deceased. One of the beneficiaries, Kishor Borkhataria Dhanji (the Applicant) filed an application pursuant to the provisions of **Section 83(h)** of the **Law of Succession Act** and **Rules 49 and 73** of the **Probate and Administration Rules** seeking orders from this court to compel the executor of the deceased's Will (the Respondent) to attend court and provide full and accurate inventory of the assets and liabilities of the estate of the deceased and to provide an upto date full and accurate account of any dealings in respect of the said estate. The Applicant major complaint as contained in the affidavit in support of the application is that since the Respondent was issued with the grant of probate, he had not performed his duties as the executor of the estate of the deceased by distributing the assets that comprise the estate of the deceased to the beneficiaries. If that is the case, then it is clear that the Respondent is guilty of dereliction of his duties as the executor of the last Will of the deceased. The power of the executor as personal representative of the deceased as provided under **Section 83(g)** of the **Law of Succession Act** includes, within six months from the date of confirmation of grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts and further to produce to the court a full and accurate account of the completed administration. It is eighteen (18) years since the grant of probate was issued. This court is of the opinion that the Applicant should have applied for revocation of grant as provided under **Section 76(d)(iii)** of the **Law of Succession Act**.

However, since the application is unopposed, this court will grant the Applicant's application. The Respondent is hereby ordered, within thirty (30) days of being served with the order of this court, to attend to this court and produce a full and accurate inventory of the assets and liabilities of the deceased, and a full and accurate account of all the dealings made in respect of the properties that comprise the

estate of the deceased. The Respondent should also provide a statement indicating whether he has distributed the properties that comprise the estate of the deceased to the beneficiaries as provide by the last written Will of the deceased. There shall be no orders as to costs.

**L. KIMARU**

**JUDGE**

**DATED, COUNTERSIGNED AND DELIVERED ON 20<sup>TH</sup> DAY OF JUNE 2013.**

**W. MUSYOKA**

**JUDGE**