REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 1688 of 2006

IN THE MATTER OF THE ESTATE OF: RAVINDER SINGH VOHRA (DECEASED)

R U L I N G

By a Petition for Grant of Probate, with a Will, dated 21st July 2006, and subsequently amended vide "*Amended Petition for Grant of Probate*," dated 5th February, 2007, the Executors named in the Will, namely Gurcharan Singh Vohra and Rajesh Vohra, petitioned for a Grant of Probate of the last Will of the *Late Ravinder Singh Vohra*, deceased.

The petition was gazetted in the official Kenya Gazettee of 4th August, 2006, as Cause No. 1688 of 2006.

Before the expiry of thirty days, an "*Objection to the making of a Grant of Probate*", was filed in the Family Division Registry on 1st September, 2006, by Piera Maria Alexander Alexander Verri alias Piera Verri of P. O. Box 897-00606, Nairobi. She stated her interest as "*as the surviving parent, custodian and next friend of the 2 beneficiaries in the Will, and also a beneficiary ---*".

The grounds of her objection appear in the body of the "*Objection to the making of a Grant*," listed as Nos 1 – 5 namely:-

"*1. THAT one of the executors named in the will, Gurcharan Singh Vohra, an advocate of the High Court of Kenya*

most (76) years of age and not in good health.

2. THAT the other executor Mr. Rajesh Vohra resides in England and being non-resident has no locus standi to apply for a Grant of Probate.

3. THAT the beneficiaries named in the Will are myself and my children with the deceased, namely, PRAVIR VOHRA and RAYNA VOHRA, who are 13 years and 7 years of age respectively.

4. THAT the estate of the deceased is very large and as has been clearly stated in the Will cannot be divided and distributed to the said children until they attain the age of 23.

5. THAT in view of the fact that one of the executors is of advanced years and the other is non residential it would be expedient and in the interest of justice that an additional Executor be appointed in addition to the those mentioned in the Will and that I be added as such additional Executrix being one of the beneficiaries and being the mother and surviving parent of the other beneficiaries who are the children of the deceased".

By 18th October, 2006, the said Objector, Piera Maria Alexandra Verri alias Piera Verri of P.O. Box 897-00606, filed an answer to the Petition for a Grant, and "***contemporaneously with the filing of the answer to the said Petition***," Petitioned for a Grant of Probate of the Will of the deceased **RAVINDER SINGH VOHRA**.

The Petition by way of Cross-Application for Grant of Probate was supported by her affidavit sworn on 18th October, 2006 and avers *inter alia*,

"I am seeking a grant of representation to the deceased's estate on the grounds that I am a beneficiary of the Will and I am also a surviving parent and biological mother of the two Beneficiaries of the Will who are also the Biological children of the deceased,"

and further, that

"***One of the Executors of the Will, GUCHARAN SING, who is 76 years of age and the other Executor is RAJESH VOHRA is not resident in Kenya. I have a genuine interest in the estate of the deceased and in the interest of Continuity, it is only practical that I be added as a joint Executor of the said estate of RAVINDER SING VOHRA."***

and further still, that

"***I do not have details of assets and liabilities of the deceased to whose estate the proceedings related, save those set out in the deceased's letter of wishes. Further, the proposed Executors referred to in the said application, have not declared on oath, as required by law, the assets and liabilities of the deceased".***

The affidavit in support of the "***Amended Petition for Grant of Probate***," sworn by the Executors states at paragraph 6 thereof,

"***That the full inventory of all assets and liabilities of the deceased at the date of his death is attached hereto and marks "GSV 2," and we have written our names upon the same at the time of swearing hereof."***

Further in these proceedings was an affidavit of **GURACHARAN SINGH VOHRA**, sworn in response to the "***Objection to the making of a Grant***".

GURACHARAN SINGH VOHRA, an Executor, was the father of the deceased. He resides in Nairobi, and is, "***A businessman and Chairman of the Sarova Group of Companies (the Sarova Group), as well as various property development companies carrying on business in Kenya.***"

About averments on his age by the Objector, he answered,

"***That contrary to what has been alleged by the objector, I am not 76 years of age. I was born on 21st September 1935, and so I am 71 years of age as appears from the copy of my Birth Certificate which is annexed hereto and marked "GS V2".***

He further averred

"***That although I have had a surgical operation on my knees same months ago, I have recovered fully. I suffer from no adverse health condition and so I am in perfect heath as evidenced by the fact that I continue to deal with the business of Sarova Group and my property development companies with skill and energy. As the Objector has no grounds to believe that I am not in good health, it appears that she has sought to deliberately misrepresent the state of my heath for her own ends."***

The Executor averred finally,

"***That contrary to what has been alleged by the Objector, I am perfectly capable of fulfilling my duties as an Executor of the Deceased's estate."***

In court during the hearing of the "***Objection to the making of a Grant"***, the Objector was represented by Miss Quadross, at the beginning. She submitted that her client, the deceased's ex-wife wanted to be "***added as an Executor***" to her former late husbands estate, as the 2 were married and had two children, aged about 7 and 14 years old respectively.

According to Miss Quadross, her client's main objection is that one of the Executors, the deceased's father is of advanced age, i.e. 71 years old, and the other Executor is non-resident in Kenya, but resident in Great Britain. That for the sake of continuity, and in the interest of Justice, the deceased's ex-wife should be added as an additional Executrix, being one of the beneficiaries, and also a mother to the to children, so that she may protect the rights of the two minor children, and also supervise the assets. She submitted further that her client's addition as an Executrix will ensure that everything is done transparently as she has the interest of her children. She quoted Rule 49 of Probate and Administration Rules, which allows such applications.

On the affidavit of G.S. Vohra, the deceased's father, she asked the court to strike out certain paragraphs as they are "mere conjecture," as opposed to information within his knowledge. That the affidavit tends to show that G.S. Vohra will be enlisting the support of other people to help him administer the estate, so she wanted her client to be added to assist in the administration.

She conceded that the deceased made his Will after the divorce between him and his wife, the Objector, but that notwithstanding, she asked the court to deal with her client's rights as a beneficiary, not as a divorced wife. Miss Quadross had earlier prepared written submissions, which she handed over to court. Her oral submissions were based on the written submissions.

Mr. Otiende Amolo for the 2nd Executor, Rajesh Vohra, submitted that the objection is misplaced and erroneous, that it is based on the mistaken belief that as a beneficiary, and former wife, she is entitled to participate in the administration of the estate, but this view has no foundation in law.

Mr. Amollo saw the objection as based on four grounds namely:-

1. ***That the first Executor, Gurcharan Singh Vohra is of advanced age,***

2. ***That the second Executor Rajesh Vohra is not resident in Kenya.***

3. ***That the Objector is a beneficiary.***

4. ***That the Objector is the biological mother of the deceased's two children.***

He submitted further that the issue here is one of "***testamentary freedom***", i.e. that the law will respect the wishes of the deceased unless there is good ground for interference which can only come for inadequacy or non-provision for a dependant, by the deceased. He relied on Section 26 of the Law of Succession Act, Cap 160, Laws of Kenya and added that in any event, such interference would come at the stage of distribution.

Further that all the issues raised in the objection were known to the deceased at the time of the making of the Will, which Will the Objector is not challenging save for seeking to be added as an Executrix.

Mr. Amollo quoted the findings of the Court of Appeal in **CIVIL APPEAL NO. 128 of 1995 ELIZABETH KAMENE NDOLO V GEORGE MATATA NDOLO**, at pages 9 – 10. He concluded that the reasons given by the Objector are not sufficient to warrant the court to interfere with the deceased's choice of Executors to his Will.

According to Mr. Amollo, further, the Objector cannot invoke sections 26 and 28 of the Law of Succession Act, Cap 160, Laws of Kenya, because at the time of the deceased's death, he and the Objector were divorced and the matrimonial property acquired during marriage had been divided.

Talking about his client specifically, he submitted that he is constantly in Kenya and was even in court during the last hearing of this cause.

The relevant question to be asked, according to Mr. Otiende Amollo is, "***Is the Executor (Rajesh Vohra) capable of administrating the estate***?" No evidence has been adduced to show that he is not able to administer the deceased's estate. Here again he referred to a Judgment of Githinji, J (as he then was) in **KARANJA & ANOR V KARANJA NJUGUNA & ANOR [2002]2 KLR p 22**, in which he held *inter alia*,

"***When deciding whether or not to grant Probate of Will, the Probate Court is not required to decide disputes of title to properties that the Will purports to dispose or disputes on the validity of disposition. All that the court has to do is to be satisfied before granting probate, that the Will is valid",***

and again,

"***That the grant of probate of a Will is the only conclusiveness as to the validity of a Will, contents of a Will and appointment of the executors. The grant of probate does not predetermine all other disputes which may arise from the Will,"***

and finally, "***the burden of proof that the Wills and codicils are void is on the Objector***."

Mr. Otiende Amollo urged the court to note that the Objector is cohabiting with another man and they have a baby. That in these circumstances, the court should consider whether the Objector and the 2 Executors are likely to get on and administer the estate. He urged the court to dismiss the objection and issue Probate of Grant to the named beneficiaries.

Submitting on behalf of the 1st Executor Gurcharan Singh Vohra, Mr. Sehmi Singh advocate adopted the submissions of Mr. Otiende Amollo for the 2nd Executor, and submitted on the facts not in dispute. These were:-

1. ***That the 2 Executors were appointed by the deceased.***

2. ***That the Objector, was divorced by the deceased prior to his death.***

3. ***That she was not appointed as an Executrix by the deceased.***

4. ***The Objector is not challenging the deceased's Will.***

Mr. Sehmi referred to the definition of an "***executor***" found in section 3 of the Law of Succession Act, Cap 160 Laws of Kenya, which means,

"***a person to whom the execution of the last Will of a deceased person, is by the testator's appointment confided".***

He also referred to section 53 of the same Act, stating that in this cause, there are 2 Executors who are both alive, ready and willing to administer the deceased's estate.

Mr. Sehmi quoted extensively from the book on the Law of Succession by Musyoka, at pages 10, 11, 27, 40 and submitted that age is not a

pre-condition to the appointment of an executor, and further, that there is no degree of certainty between the Objector and first Executor, G.S. Vohra, as to who will survive who. That the deceased was aged about 42 years old when he died, and the Objector is in the same age bracket. So we cannot ascertain between the Objector and the 1st Executor who will die first.

The appointment of Executors flows from the Will, according to Mr. Sehmi and the only restriction is found in section 56 of the Law of Succession Act. That restriction is certainly not age. The section reads,

"No grant of representation shall be made to:

(a) Any person who is a minor, or of unsound mind, or bankrupt

(b) To more than four persons in respect of the same property

(c) No grant of letter of Administration with or without the will shall be made to a body cooperate other than the Public Trustee or a Trust Corporation".

On the issue raised about delegation of the 1st Executive Duties, Mr. Sehmi referred to page 15 of the Law of Succession by Musyoka, which deals with "***Powers of Delegation***"

He submitted further that this is an estate which consists of stocks, shares and real property, and very little cash. That it is open to the 1st Executor who has Professional people working for him to make use of them for the efficient administration of the estate. That further, the 1st Executor's affidavit shows that he has his own personal expertise, and personnel, and the Objector who wants to administer the estate is a house-wife who does not possess any special sills to enable her to administer the estate.

Quoting from the Trustee Act Mr. Selimi submitted that an Executor is entitled to employ an agent such as a bank stock-broker and use such expertise in order to administer the estate.

That the Executor herein have "***locus***" because the testator appointed them and not anybody else.

Mr. Sehmi also relied on several pages of a text book by Williams on wills, 3rd Edition. These were on appointment of Executors, on Trustees, Grant to Attorneys and Consular Officers, where the procedure, accordingly to the author is that "***A person residing abroad is not obliged to apply to grant by his Attorney, he may take the grant himself***."

Mr. Sehmi pointed out the contradiction in the pleadings of the objector, where in the affidavit in support of her "***Objection to the making of a Grant she avers that she be added as an additional Executor***." Yet in the petition by way of cross petition filed subsequent to the objection, she "***petitioned the court for a Grant of Probate of the will of the deceased.***

RAVINDER SINGH VOHRA"

Mr. Sehmi urged the court not to ignore the wishes of the testator. He submitted further that though rule 74 of the Probate and Administration Rules is the, "***Saving of inherent powers of the court,***" more or less the same as Section 3A of the Civil Procedure Code, but jurisdiction invested in the court must be exercised within the framework of the law, and the provision cannot be used to make orders against the express provisions of the Succession Act. For this submission, he relied on the case of **Re- Estate of KILUNGU (Deceased).** Where Khamoni, J., made an observation at page 137 Judgment, para.40 which reads in part,

" *. . . that having been done, it does not mean that rule 73 can be used to do what the Law of Succession Act does not allow the Court to do. The rule just as section 3A of the Civil Procedure Act has to be used to do what is lawful only ….."*

Mr. Sehmi also relied on the case of **RE KATUMO & ANOTHER** where Nambuye, J. held

"*Although the High Court had power vested in it by section 47 of the Succession Act to hear and determine all manner and nature of applications, the Act did not have a provision whereby a named beneficially could move and seek to protect the estate properly in the absence of a grant of representation where there was no provisions covering a particular aspect, the court had no jurisdiction.*

Mr. Selimi submitted further that there are no provisions for the court to appoint additional executors and rules 47 & 73 of the Probate rules cannot be invoked because there are no specific rules dealing with the matter …"

On issued raised about the affidavit of G.S. Vohra, Mr. Sehmi submitted that his client did disclose the source of his information, contrary to the submissions by the objector, who has not disclosed in the pleadings filed that she is in fact cohabiting with another man with whom she has had a child.

Mr. Orengo, advocate was appointed by the objector when the Succession Cause was almost concluded, but after going through the records, he replied to the submissions of Mr. Sehmi Singh Advocates, by 1st adopting the submissions of Miss Quadrose who represented the Objector at the beginning of the hearing of the Objection.

According to Mr. Orengo the Objector is not seeking to disqualify any of the Executors, but simply wants to be added as an administrator. He termed these proceedings as special and the court's jurisdiction is contained in section 47 of the succession Act, Cap 160, Laws at Kenya. That what the law does not prohibit, the court can grant. He submitted further that though the Executor draws his title from the will, but it is upon the Court issuing a Grant of Probate to make a decision under Section 53 of the law of Succession Act. He was infact submitting that Section 53 is "***wide enough***" to enable the court to make a decision asked for by the Objector herein.

Section 53 quoted above reads,

"***If a gift is bequeathed to a person who is named as an Executor of the will for his won benefit, and is not given independently of the office of the Executor, there shall be a presumption that he is or intended to take the gift unless he proves the will or otherwise unequivocally manifests an intention to act as Executor"***

Mr. Orengo listed the special circumstances existing in this cause, which should warrant the Court to exercise its discretion in favour of the Objector and add her as an administrator. These are:

1. ***That there is a continuing trust***

2. ***That the age of one of the Executor is "advanced".***

3. ***The estate of the deceased is large.***

4. ***The Objector is the sole legal guardian of the deceased's two children.***

5. ***Objector is also a beneficiary.***

6. ***That the mode of distribution is spelled out in the Will, and the Objector does not have issues with this.***

Mr. Orengo invited Court to exercise its discretion under Section 53 of the Succession Act, and grant the prayers sought as there are special circumstances to warrant it to do so.

He referred to some issues which came out during the submissions, such issues as the fact that the Objector had re-married and had a baby with another man. He submitted that this issue was totally irrelevant in view of the "***emerging jurisprudence***", such as the fact that a biological mother has certain responsibilities of looking after the deceased's two children; "***despite her changed status***", that she has responsibilities towards the two children. The tenure and spirit of the Succession Act encompasses wife, former wife etc etc. He noted that the Will was made after the Objector and the deceased were divorced.

The above summary of the arguments by the Learned advocates do show that the Objector is not challenging the provisions of the Will and codicil i.e. what was bequeathed to her as well as to the two children of the deceased. Her objections as the arguments show are in the proceedings she filed.

In an effort to try to understand the concerns of the Objector about the Executors, I decided to refer to the Will and codicil, though they are not challenged.

The Will says in Clause 2,

"***I give Piera Verri such part of my real and personal property as I shall in my lifetime notify my said Executors and trustees in writing".***

The testator (deceased) executed this Will on 9th August 2005, and on the same date, he addressed a note to the two Executors in pursuant to Clause 2 of his Will, and notified them of what was to be inherited by PIERA VERRO. These were:

"***1. The immovable property along Tando Drive, Lavington Nairobi where I presently reside.***

2. Money lying to my credit with the following banks.

(a) Giro Comercial Bank, Kimathi Street, Nairobi

(b) Barclays Bank of Kenya, Plaza Branch, Nairobi

3. Tanzanite Stones deposited with my sister Mita Joo

4. Valentine Fund Shares with CFC Bank Limited, Nairobi operated on my behalf by Rajeev Mediratta and Amish Gupta

5. 25% of my share holding in Aircraft Leasing Services Limited, Nairobi

6. One-half of beneficial interest in any life insurance policy that I may take out in the future as may be specifically provided for in the

policy".

Clause 4 in the Will is no longer relevant really because the deceased died before Piera Verri.

At this point in my ruling, I wish to pose the following question, "***Would what the Objector refers to as the "advanced" age of the Executor, Mr. G. S. Vohra and the "non-residence" in Kenya of the second Executor Rajesh Vohra, affect the above legacies bequeathed to her, if the Executors were issued with the Grant of Probate, with written Will, as at the date they petitioned for it in Court? "***. May be not.

Secondly in the Will are the legacies to the deceased's two children. This is found in Clause 3 of the Will which reads,

"***I give all my real and personal property whatsoever and wheresoever, other than the shares in various companies held by me in trust and also other than what I have given to the said PIERA VERRI as stated above, to my son PRAVIR VOHRA and my daughter RAYNA VOHRA in equal shares. My said Executors and trustees shall hold the shares of each child in trust until the child has reached the age of twenty three years"***

A perusal of the Court file revealed an affidavit to the amended petition dated 5th February 2007 giving a list of the Assets and Debts of the deceased's estate. There are only two real estate assets, one of which was bequeathed to Piera Verri. The rest of the assets are mostly stocks and shares, bank accounts, deposits and other assets, and of course, debts.

Addressing my mind specifically to the two children, I note that as at September 2006, when the Objector filed "***Objection to the making of a Grant***", they were aged 13 and 7 years old respectively. I suppose today November, 2007 they would be aged 1`4 and 8 years old respectively.

Clause 3 in the Will which I have already outlined stipules in part,

"***My said executors and trustees shall hold the shares of each child in trust until the child has reached the age of twenty three years."***

Here again I would like to pose a question and that is "***Would what the Objector refers to as*** **G. S. Vohra's** "***advanced age***" and **Rajesh Vohra's** '"n***on-residence***" in Kenya, affect the legacies to the children, if they were issued with the Grant of Probate?

I have posed the above question because of the contents of the affidavit of Piera Maria Alexandra Veri alias PIERA VERRI, sworn on 1st September 2006, where she averred inter-alia, "***The estate of the deceased is very large and as has been clearly stated in the Will cannot be divided and distributed to the children until they attain the age of 23***"

Is this the real bone of contention in this estate?

The said affidavit goes further to state at paragraph 5,

"***That in view of the fact that one of the Executors is of advanced years and the other is non resident, it would be expedient and in the interest of justice that an additional Executor be appointed in addition to those mentioned in the Will and that I be added as such additional Executrix being one of the beneficiaries and being the mother and surviving parent of the other beneficiaries who are the children of the deceased"***

Miss Quadross who represented the Objector at the beginning of the proceedings, whilst arguing the case for her client submitted,

"***That for the sake of continuity and in the interest of justice, the deceased's ex-wife should be added as an Executrix being one of the beneficiaries and also mother of the deceased's two children, so that she may protect the rights of the two children, and also supervise the assets to ensure that everything is done transparently as she has the interest of her children …"***

Mr. Orengo for the Objector made more or less similar submissions in his closing replies about the objector's responsibilities towards her two children who are beneficiaries in the Will.

As the mother of the deceased's children, I believe that she has their best interest at heart. I would be surprised if she did not.

What about the two Executors? Is there anything to show their concern for the children, other than just wanting to perform the duty for which the deceased appointed them as Executors?

During the course of submissions before me, and particularly on 13th June, 2007, Mr. Sehmi, counsel for the 1st Executor whilst making an oral application on behalf of his client, on the matter of access to the children submitted,

"***I wish to place on court's record the matter of access of the Executors to the children. I have written letters to my learned friend but received no response. The Executors are making generous payments to the children and their mother (the Objector). They pay Ksh.150,000/= p.m. plus all the expenses of the children, including school fees, plus a car which has been provided to the Objector. Further, the Executors have carried out extensive renovations to the house at their expense. That they just wanted to know what is***

happening to the children, that is why they want to see them."

Though the matter of access to the children was not part of the pleadings, the Objector's advocate responded to it by saying,

"***I was out of the country. Besides, my client was in hospital having a baby".***

The Objector's advocate did not deny Mr. Sehmi's submissions about the contribution the Executors are making from their own resources to the Objector and the children, before the Will is proved in court.

In any event these contributions are contained in Mr. G.S. Vohra's affidavit of 5th February, 2007.

The advocates articulated the legal provisions found in the Succession Act Cap 160, Laws of Kenya, which they wanted the court to consider whilst dealing with the Objector's request to be or not to be added as an Executrix.

The Executors advocates being opposed to the Objector's request relied on the 3 decided bases by Judges of this court, amongst other legal provisions as the Ruling shows. The two decisions, namely, **In Re Estate of Kilungu**, (deceased) and **In Re Katumo** (deceased). Being decisions of Judges of this court are not binding on me, but can be of persuasive value if I decide to adopt them.

Bearing in mind the legal provisions and the case law cited, I am of the considered view that the following are some of the important points for decision.

First is the fact that at this point in time, the one and all important question to which the court must find an answer is to whom should a Grant of Probate with a written Will to the deceased's estate herein be issued? Should it be issued to the 2 Executors appointed by the testator during his life-time, or the two jointly with the Objector who was not appointed by the testator, though the biological mother of the deceased's children?

An answer to that question will show clearly that the averment in the Objector's affidavit of 1st September 2006, that the

"***estate of the deceased is very large - - - and cannot be divided and distributed the children until they attain the age of 23 "***, is ***premature*** because the stage of "***dividing and distributing the estate***", is yet to come, and in any event, no estate can be divided and distributed without a Grant of Probate, such as this one having been issued and confirmed by court. This estate has actually stagnated because no Grant of Probate has been issued and confirmed.

Secondly is the matter of the concerns raised about the 2 Executors and the replies thereto. I have duly considered them and would go further to say that the concerns raised must be such as to make the Executors named in a Will, incapable of administering the deceased's estate and hence the need for the court to appoint additional Executors or Executrix, as the case my be. I say this because the provisions of section 56 of the Succession Act which has the foot notes,

"***No grant to certain persons***," does not include such restrictions as "***advanced age***" (71 years old) in this case and or "***non-residence***" in Kenya. In any event, the 1st Executor Mr. G.S. Vohra in his affidavit of 5th February, 2007, attested to his physical fitness and "***capability to fulfilling his duties as an Executor of the deceased's will, and this was not challenged***". Similarly, the second Executor, Rajesh Vohra, though resident in the United Kingdom, was said to be in court at some stages during these proceedings and had also sworn an affidavit on 5th February 2007, confirming that the 2, will "***faithfully administer according to law the estate which devolves upon them--"***

Third is the Objector's desire to protect and supervise the assets bequeathed to her children who are still under age, yet the assets will not become due to them until they reach the age of 23 years old.

I can very well understand her anxiety and, or fears as the mother of the children but to me the issue is, first, whether there any reasons to believe that the 2 Executors will not act transparently in this matter?. No such reasons were advanced in court. Further, is there cause to say with reasonable certainty that Mr. G.S. Vohra will not make it through the administration of this estate due to his age? There is none, but in case he does not, God forbid, then the relevant provisions of the Succession Act will have to come into play and the court will no doubt be moved to protect the interests of the continuing trust by appointing an additional Executor or Executors as circumstances will determine. That stage, in my considered opinion, has not come to pass.

Finally and very important, is whether the Executors named in the Will, have the interest of the beneficiaries, especially the 2 children at heart?

That issue is very ably addressed by the affidavit of G.S. Vohra of 5th July 2007 which I have already referred to, at paragraph 17. Over and above this, were the persistent requests by Counsel for the 1st Executor during the hearing, to allow his client, who is the children's grandfather access to the children whom he had not seen for a long time. These requests caused me to make an order allowing for such access only ***once***, on humanitarian grounds, though I am not sure that it was well taken because subsequently the Objector's previous advocate withdrew from acting and a new one was engaged. What the advocate told the court whilst making an oral application for withdrawal is on the court record.

The issue of assets and liabilities, i.e. a full inventory of the deceased's estate was addressed by the first Executor's affidavit dated 5th

February 2007. I have read the affidavit carefully and I find that it contains information which the Executor says is within his knowledge.

Before I conclude this Ruling, I need to make it clear that I have not addressed or made any adverse findings on the fact that the Objector has "***moved on***," i.e. that she lives with another man and they have had a baby who was born during the hearing of this cause as her lawyer submitted. This was not an issue before me, and in anywhere, the deceased made provisions for her in his Will which he made after divorce. Again, that matter has had no bearing to my finding in this Ruling.

All in all, I am satisfied that the two Executors appointed by the deceased in his Will, are capable of and will administer the estate faithfully, despite Mr. G.S. Vohra's age of 71 years old and Rajesh Vohra's non-residence in Kenya, because they have the interests of the beneficiaries at heart.

Though the Objector prayed that she be added as an Executrix, I find that the Law does not allow me to do so, and to this extent, I adopt the findings of the decisions of Nambuye, J and Khamoni, J and Githinji, J (as he then was), which I have decided to follow. Further still, my consideration of the evidence in great detail in this Succession Cause has made me come to the conclusion that no circumstances exist to warrant me to exercise my discretion under section 53 of the Succession Act, and add the Objector as an additional Executrix. I therefore move to dismiss the "*Objection to the making of a Grant*", and "*Petition by way of cross-application*", filed by the Objector.

As this is a protracted family dispute, I order each party to pay their own costs.

Dated, Delivered and Signed at Nairobi this 2nd day of November, 2007.

JOYCE ALUOCH

JUDGE