



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**Succession Cause 88 of 2002**  
**IN THE MATTER OF THE ESTATE OF**  
**VASUDEV MOHANLAL DEVANI (DECEASED)**  
**R U L I N G**

Chamber Summons dated the 21.2.2005 seeks the revocation of grant issued by this court on 21.2.2003 on the grounds that the person to whom the grant was made has failed, after due notice and without reasonable cause to proceed diligently with the administration of the estate, and that the administrator has failed to produce any inventory or account of the administration.

The application is supported by affidavit of one Devani who swears that the grant was made to KALPESH V DEVANI on 21.1.2003 and that the applicant is an uncle to the administrator and he is concerned because the administrator has a wife and child. And without proper and genuine supervision the administrator will dissipate the estate and will render himself and child completely destitute.

Also the administrator has already failed to administer the assets of deceased and has sold off assets of a company called Shorret (K) ltd almost bringing it to a standstill.

The applicant proposes some 6 businessmen including administrator's grandmother to be appointed administrators of the estate. The applicant admits that he is not a beneficiary of the estate. It is feared that the administrator is about to wind up his affairs and move to India where he has also inherited assets.

Upon perusing the application and supporting affidavit I do not see any evidence that the proceedings to obtain grant were defective in substance or that the grant was obtained fraudulently or by means of untrue allegation of fact essential in point of law.

It is alleged that the administrator has already dealt with large assets of the estate by sale and has caused a company Shorret (K) Ltd to collapse by his failure to diligently proceed with distribution. It is stated that the deceased was only a shareholder in that company to the extent of 600 ordinary shares valued at Sh. 2,400,000/= It is not explained how he has caused the said company to collapse. The estate share is identified clearly.

The supporting affidavit shows clearly that the administrator is doing things regarding to the estate. He is not idle. On the second ground that the administrator has failed to produce within the prescribed accounts or inventory of the assets. The prescribed time is 6 months under Section 83(e). There is nothing on record to show that this provision of law has been complied with.

Notwithstanding the above, it is in the discretion of the court to annul a grant.

There are issues which have to be considered. (1) The administrator is the only beneficiary. The applicant is not in any way interested in the assets of the deceased.

Section 94 of the Succession Act provides that neglect or misappropriation of assets of estate by personal representative he shall be liable to make good of loss or damage so occasioned whether he has committed offence or not. In this case who is complaining that of loss or damage has been occasioned?

Furthermore Rule 29 Probate & Administration Rules requires the court to be satisfied as to the means of proposed administrator to ensure he will carry out the job of administering the estate. The administrator filed an affidavit of justification at the time of making application for grant.

Rule 29(2) also requires that 2 sureties be taken to guarantee that they will make good within any limit in consequence of breach by administrator. The court did take a surety in this case in the um of 16 Million shillings.

After considering the complaints raised herein I am not satisfied that there is good reason to revoke the grant issued to the administrator. The grant is not confirmed yet.

Action against administrator and his sureties can be taken if the applicant wants to recover for the loss and damage occasioned to the estate, if any.

I therefore find no merit in the application and the same is dismissed with no order as to costs.

Dated the 6th July 2005.

**J KHAMINWA**

**JUDGE**