



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 88 OF 2001**

IN THE MATTER OF ESTATE OF ALIBHAI K. NATHOO VIRAN alias

ALIBHAI KANJI VIRANI (DECEASED)

**R U L I N G**

A Grant of Letters of Administration with Will annexed was issued to Shamim Akhtar Hashmy and Munir Alam Zulfikarali Alibhai Virani on 15th October, 2001.

Before the Grant of Probate could be confirmed, an application for dependency under Section 26 of the Succession Act was filed by one Hussein Muhammad Virani, claiming to be a dependant of the deceased, Alibhai Kanji Nathoo Virani alias Alibhai Kanji Virani.

The summons under Section 26 aforesaid was filed on 23rd May, 2001. The supporting affidavit dated 23rd May, 2001 was filed in court the same day.

Paragraph 6 thereof reads

“My relationship with the deceased is as follows: -

*(a) I am a grandson of the deceased (paternal) (A child of his son one Mr. Muhammad).*

*Paragraph 9 of the same affidavit reads, “The said deceased made the following gifts in contemplation of death: -*

*(a) Verbally that I would share his net estate both money in the Barclays Bank of Kenya and Treasury Bills therein”.*

In reply to the objection raised, Shamim Akhtar Hashmy in his replying affidavit dated 17th July, 2001 denied the averments in the objector’s affidavit saying that the deceased who resided in the United Kingdom used to come to Kenya for about 3 to 4 months and would stay with him, and during such a stay, the deceased would try to make contact with the objector, but with no success, as his whereabouts were not known.

Paragraph 8 of the affidavit states when the deceased died, after a short illness but the objector never visited him in hospital. In view of this the petitioner stated as follows in part of para 9,

***“..... The objector did not maintain any contact with either the deceased or any member of the family”.***

In court during the hearing of the objection Mr. Kithinji urged the court to give the objector at least 1/8 portion of the estate because the evidence in the affidavits showed that there was some relationship between the deceased and the objector.

Mr. Mwangi for the executors submitted that the objector failed to prove that he was dependent on the deceased during his lift time. He submitted further that the objector has his own income and can sustain himself.

The objector was not provided for in the will by the deceased, that is why he raised the objection.

I have read the affidavits and also heard the oral submissions by both learned counsel.

From all this I came to the conclusion that the objector has not shown that he was dependent of the deceased before the latter died. I have not found any evidence to warrant me to find that the objector was a dependent of the deceased within Section 26 of the Succession Act. For this reason, I find no merit in the objection raised by Hussein Muhammed Virani, and I proceed to dismiss the same with costs.

Dated at Nairobi this 4th day of July, 2002.

**JOYCE ALUOCH**

**HIGH COURT JUDGE**