



REPUBLIC OF KENYA



**In re Estate of Parvatiben Virji Shah (Deceased) (Succession Cause 2243 of 1995)
[2024] KEHC 14609 (KLR) (Family) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14609 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2243 OF 1995
PM NYAUNDI, J
NOVEMBER 21, 2024
IN THE MATTER OF THE ESTATE OF THE LATE PARVATIBEN VIRJI SHAH DECEASED**

RULING

1. This ruling relates to 2 Applications. The first is dated 9th October 2023 and is presented under Section 76 (d) (ii) & (iii) of the *Law of Succession Act*. The Applicant therein seeks the following orders-
 1. Spent
 2. That this Honourable Court do revoke and or annul the Grant of Probate of Written Wil issued on 12th March 1996 to Pranla Virji Shah (now deceased), Ashok Virji Shah (now deceased), Ashok Virji Shah (now deceased) and Pradeep Virji Shah (sole surviving executor)
 3. That this Honourable court be pleased to appoint Vimal Jayantilal Shah as the executor of the estate of the late Parvatiben Shah and issue a grant of representation in the name of Vimal Jayantilal Shah.
 4. That the Honourable Court do issue an order directing the Registrar of Companies to rectify the register of Parvir Properties Limited and include all the beneficiaries of the estate of Parvatiben Vijay Shah or the administrators of their respective estate as the shareholders and directors each with equal share as provided for in the Court Order dated 23rd July 2008, within 30 days.
 5. That the Honourable Court do issue an order directing the Bank of Baroda to provide the full statement of accounts for Account Number 95860XXXXXXX in the name of Parvir Properties Limited from the date of opening of the account until the date of the order herein, within 14 days.
 6. That this Honourable Court do find, hold and declare that Pradeep Virji Shah the Respondent herein is in further contempt of Court for continuing to disobey the Court Order made on 30th



January 2015 and hence be committed to civil jail for such period as this Honourable Court may deem fit

7. That this Honourable Court do grant such further orders as it shall deem fit under the circumstances of this case.
8. That the costs of this Application be awarded to the Applicant in any event.
9. The Application is supported by the Affidavit of Vimal Jayantilal Shah sworn on 9th October 2023 and Supplementary affidavit sworn on 5th July 2024. This Application is opposed by Pradeep Virji Shah who has sworn an affidavit on 24th April 2024 in opposition.
10. The 2nd Application is Notice of Motion dated 1st April 2024 that seeks the following orders, That-
 1. The Honourable Court be pleased to set aside the orders made by the Honourable Justice Musyoka on 30th January 2015 and all consequential orders thereof.
 2. The Honourable Court be pleased to set aside in the alternative the orders made by the Honourable Lady Justice Maureen A. Odero J. on the 4th August 2023 and refund the Applicant Kshs. 50,000/- deposited in Court on the 16th August 2023
 3. The Honourable Court be pleased to grant such further orders as it may deem necessary in the interest of justice.
 4. The costs of the Application be provided.
2. With regard to the 1st Application, dated 7th October 2023, it is contended that the executor Pradeep Virji Shah has mismanaged and intermeddled with the estate of the deceased. In particular, it is contended that the Executor has failed to administer the estate as per grant Confirmed on 16th December 2016 pursuant to a consent recorded by the Beneficiaries to the Estate.
3. Specifically, it is contended that the Executor has failed to ensure that all beneficiaries are shareholders of Parvir Properties Limited. He has also neglected to comply with order requiring that he restore to the estate money he withdrew from Safari Business Account number 0102XXXXXX00, Standard Chartered Bank, Ukay Centre Branch, Nairobi. He has already been found in contempt by Lady Justice Odero M. vide ruling delivered on 4th August 2023.
4. It is averred that the Executor is in breach of Section 83 (g) of the Law of Succession Act, with regard to presentation of final accounts. It is submitted that he has also failed to account for the proceeds received from the sale of the estate asset. LR 209/99/24. The Applicant is apprehensive that the Executor may sale the sole asset of the estate to the detriment of the beneficiaries.
5. In response the Executor while confirming that he is the surviving executor avers that the estate had two properties LR No. 209/99/23 and LR No. 99/24. That in compliance with consent recorded the assets were vested in Parvir Properties Limited and has annexed title documents in support of the same.
6. With regard to the allegation that he is in contempt of Court it is his response that he has applied to review the order of the Court. He contends that he has always acted in the best interests of the Estate including by personally paying the monthly income tax that accrues from the monthly rent to the property. It is his averment that it is the Applicant who has occasioned the delay of transmission of shares to him as he has failed to execute the transfer forms.



7. It is submitted that the Applicant has failed to remit rent due on the flat he occupies that is on LR No. 209/99/23. It is his contention that the Estate has been fully transmitted and therefore nothing left to administer
8. With regard to Application dated 1st April 2024 it is sought to set aside the orders made on 30th June 2015 contending that the Court erred in directing that he refunds money withdrawn. It is submitted that the error by the court was in finding that-
 1. The Applicant was still the executor of the Estate despite the fact that the Estate Assets were distributed and the estate dissolved in 2001.
 2. The Applicant was liable for the withdrawal of money from the Advocates Account.
 3. The Applicant was a signatory of the Advocates account despite there being clear evidence that the withdrawal was by the Advocates who were signatories to the Account.
 4. The Applicant had no access to the account
 5. The amount withdrawn was on behalf of the Applicant and/ or to his benefit
 6. The Applicant was in contempt of Court Orders and more specifically that he had failed to restore the funds withdrawn from the Safari Business Account Number 0152XXXXXX and BPS Current Account Number 01020XXXXXX
9. It is his contention therefore he was erroneously found in contempt vide the ruling 4th August 2023.
10. In response, the Respondent contends that the application is incompetent and bad in law. It is contended that the Application is presented 9 years post the impugned ruling. He contends that the Applicant has already paid the fine to purge the contempt. It is contended that if unhappy with the Order 30th January 2015, the Applicant should have appealed against the same. It is averred that this is an appeal disguised as an application for review. It is argued that in any event the factual statements made by the Applicant were never brought to the attention of the Court.
11. The Court directed that the matters be canvassed via written submissions.

Summary of the Submissions of Applicant

12. In Submissions dated 9th July 2024, the Applicant identifies the following as the issues for determination-
 1. Whether this honorable Court should revoke and or annul the Grant of Probate issued on 12th March 1996 to the Respondent
 2. Whether the Court should appoint Vimal Jayantil Shah as the executor of the estate of the late Praviben Shah and issue a grant of representation in his name.
 3. Whether the Application is merited
13. On the 1st issue the Applicant submits that the conduct of the Executor fits within the parameters of Section 76 (d) of the *Law of Succession Act* and that therefore the grant ought to be revoked. Reliance is placed on the decision *in re Estate of Prisca Ong'ayo Nande (Deceased)* [2020] eKLR and *re Estate of Reuben Mutuku Kiva (Deceased)* [2021] eKLR. It is submitted that the Administrator has failed to administer the Estate and the grant should therefore be revoked and reference is made to the decision on *re Estate of Festo Lugadiru Abukira (Deceased)* [2019] eKLR and *M K M & 3 Others v B N M*



[2016] eKLR. The Applicant also relies on the decisions in [re Estate of Eliud Njoroge Kuria \(Deceased\)](#) [2015] eKLR on the duties of an Administrator.

14. The Applicant submits that the Court should invoke its inherent powers revoke the grant and appoint him as the administrator.
15. At the time I retired to write this ruling the Respondent was yet to file their submissions.

Analysis and Determination

16. Having considered the pleadings herein, submissions filed, authorities cited and the relevant law I frame the following as the issues for determination
 1. Whether the Application dated 1st April 2024 has merit
 2. Whether the Court has jurisdiction to hear Application dated 7th October 2023
 3. Whether the grant of probate issued to Pradeep Virji Shah should be revoked
 4. Who should pay costs of this suit
 5. What if any consequential orders the Court should make.
17. On the 1st issue, whether the Application dated 1st April 2024 is meritorious. The Applicant does not cite the law under which the Application is presented thereby immediately running into headwinds. From the body of the Application and the supporting application it appears that the Applicant is seeking the setting aside of the Orders issued by Court on 30th January 2015 and 4th August 2023. It is evident that this opacity has disadvantaged the Respondent as not being clear on the case to respond to they have responded as if the Applicant is seeking a review.
18. On the mandatory requirement that parties follow the right procedure in presenting matters for judicial adjudication, Hon. Kiage JA observed in [Nicholas Kiptoo Arap Korir Salat v. the Independent Electoral and Boundaries Commission and 6 Others](#) [2013] eKLR:

I am not in the least persuaded that Article 159 of the [Constitution](#) and the oxygen principles which both command courts to seek to do substantial justice in an efficient, proportionate and cost-effective manner and to eschew defeatist technicalities were ever meant to aid in the overthrow or destruction of rules of procedure and to create an anarchical free-for-all in the administration of justice. This Court, indeed all courts, must never provide succor and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make the process of judicial adjudication and determination fair, just, certain and even-handed. Courts cannot aid in the bending or circumventing of rules and a shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is in the even-handed and dispassionate application of rules that courts give assurance that there is clear method in the manner in which things are done so that outcomes can be anticipated with a measure of confidence, certainty and clarity where issues of rules and their application are concerned.

We have said enough of this matter, which to some might appear trivial, though fundamental in the determination of the issue as to whether the appellant's Motion for review of the 1st Respondent's decision stood the competency test weighed against mandatory rules of procedure. Having carefully considered the appeal before us, the judgment of the High Court and the respective positions of the parties considered against the [Constitution](#), the statute and judicial precedents relevant to the issue, we reach the



inescapable conclusion that the appellant's appeal must fail. It is hereby dismissed with costs to the respondents.

19. The Application must therefore fail for being incompetent as it does not cite the provisions under which it is presented. Further the Applicant has not laid a basis as to why this Court should consider this applications that are presented with delay, 9 years post the impugned decision. The Application is accordingly struck out.

20. On the 2nd Issue whether this Court has jurisdiction to consider the Application.

Apart from the revocation of the grant the Applicant in application dated 7th October 2023 seeks that the following orders-

1. That the Honourable Court do issue an order directing the Registrar of Companies to rectify the register of Parvir Properties Limited and include all the beneficiaries of the estate of Parvatiben Vijay Shah or the administrators of their respective estate as the shareholders and directors each with equal share as provided for in the Court Order dated 23rd July 2008, within 30 days.
 2. That the Honourable Court do issue an order directing the Bank of Baroda to provide the full statement of accounts for Account Number 95860XXXXXXX in the name of Parvir Properties Limited from the date of opening of the account until the date of the order herein, within 14 days.
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21. It is not in dispute that the Estate had two assets, LR No. 209/99/23 and LR No. 99/24. Pursuant to the Confirmed Grant ownership of both was transferred to Parvir Properties Limited. I have had sight of both titles. The assets cannot therefore be said to be estate properties as they are no longer in the name of the deceased.
22. As was pronounced in the celebrated case of *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* (1989) KLR 1;-

I think that is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its stools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

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23. The mandate of the Probate Court is to distribute the free estate of a deceased person among the rightful beneficiaries. This was clarified in *re Estate of Ernest Kerry Komu (deceased)*[2016]eKLR, where the court held that;

I have perused the court record. The grant herein was confirmed on 31st October 2005. The subject property was indeed devolved to the applicant and the respondent jointly. The applicant alleges that the property was subsequently registered in their joint names. Once a grant is confirmed and the property is distributed, as is the case here, the probate court becomes functus officio. The property in question is no longer estate property. It no longer vests in the administrators. It is no longer subject to the *Law of Succession Act*, Cap 160, Laws of Kenya, from which the probate court draws its authority and jurisdiction.

24. The same reasoning must apply in the instant case. The ownership of the properties has shifted. The assets at issue are not in the name of the deceased person. The Applicant is aggrieved at the manner in which the affairs of the Company are run. There is a legal regime to resolve those disputes. Accordingly, the Application is dismissed as this court lacks jurisdiction.

25. This Court having found that the Executor wrongfully withdrew amounts that were estate monies, the beneficiaries can lodge a claim for its refund from a court with jurisdiction. The work of this Court on this file is done and in accordance with one of the basic dicta of our legal system litigation must come to an end. I therefore will close this succession cause and recommend to the Applicant to pursue his claim(s) before a court of competent jurisdiction.

26. In the final analysis both applications fail and each party will bear their costs. The file is closed.

It is so ordered.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
21ST DAY OF NOVEMBER, 2024.**

P M NYAUNDI

JUDGE

In the presence of:

Ogado Advocates for the Applicant

Gakunga Advocates for the Respondent

Fardosa Court Assistant

