



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Benito Favali (Deceased) (Succession Cause  
43 of 2019) [2021] KEHC 9804 (KLR) (4 February 2021) (Ruling)**

Neutral citation: [2021] KEHC 9804 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 43 OF 2019  
JN ONYIEGO, J  
FEBRUARY 4, 2021  
IN THE MATTER OF THE ESTATE OF BENITO FAVALLI (DECEASED)**

**RULING**

1. The deceased herein died intestate on November 16, 2017 while domiciled in Kenya leaving behind two sons namely; Andrea Favalli (52 years) and Marco Favalli (49 years). Among the assets listed as comprising the estate, was;
  - (a) 200 ordinary shares in Reef Cats limited
  - (b) Funds in Barclays Bank of Kenya, Diani Branch, account number XXXXXX
  - (c) Share in the estate of Tatiana Favalli Burba.
2. The two sons jointly petitioned for a grant of representation on September 17, 2019. The estate was gazetted on October 11, 2019 and a grant of letters of administration issued on September 25, 2020. Subsequently, the administrators filed Summons dated November 12, 2020 seeking confirmation of the grant expiry of six months notwithstanding. The grounds cited in support of the application are that; the petitioners are the only beneficiaries of the estate; that there is no objection filed.; that the estate is being shared equally and, that the deceased was the sole shareholder and Director of Reef Cats limited whose annual returns have not been filed since 2017 when the deceased died hence the urgency for confirmation of the grant for the petitioners to assume ownership, management of the company and therefore file relevant returns.
3. The Application is supported by an affidavit sworn on November 4, 2020 jointly by the petitioners. While arguing the application, M/s Nabila appearing for the petitioners basically adopted the content contained in the affidavit in support. I have considered the application herein, affidavit in support and the averments contained in the affidavit in support.
4. Under Section 71(3) of the *Law of Succession Act*, a court can on an application of the holder of a grant of representation direct that the grant be confirmed before the expiration of six months from the date of the grant if it is satisfied;



- a. That there is no dependant, as defined by Section 29, of the deceased or that the only dependants are of full age and consent to the application
  - b. That it would be appropriate in all the circumstances of the case to so direct
5. From the above provision, a court is bestowed with discretionary powers to allow confirmation of a grant before the expiry of six months if the above conditions are met or for any other sufficient cause. In this case, there are only two survivors who are also the beneficiaries of the estate in equal share. There is no abjection filed nor are there other dependants. Taking into account that the deceased's company business where he was the sole shareholder and Director has been hindered in its operation, it is prudent that the grant be confirmed before the expiry of six months. There will be no prejudice in so doing hence the application is allowed and the grant confirmed as prayed. The estate be and is hereby shared equally between the petitioners as proposed in the affidavit in support.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 4<sup>TH</sup> DAY OF FEBRUARY 2021**

**J. N. ONYIEGO**

**JUDGE**

