

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 239 OF 2020

IN THE MATTER OF THE ESTATE OF BHAGWANJI HEMRAJ JETHA SHAH (DECEASED)

RAMESH BHAGWANJI SHAH.....PETITIONER

RULING

1. There are two estates for distribution before me and each has a will. The Estate substantively before me for confirmation of grant of probate is that of BHAGWANJI HEMRAJ JETHA SHAH who died domiciled in Nairobi, Kenya on 26th December 2011.

2. In his will, the Deceased has identified and bequeathed his entire estate to three persons;

- i. Monghiben Bhagwanji Shah - Real and personal estate
- ii. Damyanti Ramesh Shah - Lr No. 7158/82
- iii. Ramesh Bhagwanji Shah - All shares in Jaydees Knitting Factory Limited

Monghiben survived the deceased but has since passed away. The will has not been contested although it did not provide for his two daughters.

3. The second Estate is that of MONGHIBEN BHAGWANJI SHAH in which Ramesh Bhagwanji Shah is also the executor named in the will. The executor in this estate cannot purport to administer the estate in a paragraph in an affidavit in support of the summons for confirmation of a different grant of probate. It is trite law that parties are bound by their own pleadings and that any variance however strong should be disregarded. See **Daniel Otieno Migore -Vs- South Nyanza Sugar Co. Ltd [2018] eKLR**.

4. It is not in dispute that the Estate of MONGHIBEN is entitled to a share of the estate of the deceased herein. The executor should have filed for grant of probate. Once gazetted and the grant issued, the two causes would be open to consolidation for purposes of confirmation of the grants and the distribution of the assets in each estate to the beneficiaries named in the respective wills.

5. That having not been done the court allows the summons for confirmation dated 28th June 2021 with the following orders;

- i) The grant of probate with will annexed in regard to the Estate of BHAGWANJI HEMRAJ JETHA SHAH issued on 27th November 2020 be and is hereby confirmed.

The estate of the deceased herein shall devolve to the beneficiaries named in his will in accordance with his wishes in the said will annexed to the supporting affidavit dated 28/6/21

- ii) The Executor named in the will of MONGHIBEN BHAGWANJI SHAH shall file for grant of probate of her will and have it gazetted and confirmed before the assets in her estate can be distributed.

- iii) Cost shall be in the cause

SIGNED DATED AND DELIVERED THIS 6TH DAY OF OCTOBER 2021.

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L. A. ACHODE

HIGH COURT JUDGE