



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO.3046 OF 2013

IN THE MATTER OF THE ESTATE OF LATE SYED BABAR ALI SHAH (DECEASED)

**IN THE MATTER OF AN APPLICATION FOR REVOCATION FOR ANNULMENT OF GRANT BY RAHEELRAZZAK
SHAH**

RULING

1. The Deceased herein SYED BABAR ALI SHAH (Deceased) died on 12th August 2011.
2. On 20.3.2017 SYED FARHATALI SHAH and QAESIR SULTANA S.B.A. SHAH were issued with grant of probate with written will
3. The annexed will dated 31.10.2010 stated as follows:

“After my demise, my Nephew namely SYED FARHATALI SHAH of P.O Box 45277-00100 Nairobi shall become a custodian of all my assets including my Property in South B – Sadi Road, my permanent Residence. He shall hand over all assets to my daughter namely FIRJAHRAZA who resides in Pakistan. I have instructed my daughter the distribution of all my assets. This is my last will and must be followed per my wishes”
4. On 22.6.2018 the Applicant, herein RAHEEL RAZZAK SHAH filed the Application dated 22.6.2018 seeking revocation of the grant of probate made to SYED FARHATALI SHAH and QAESIR SULTANA S.B.A. SHAH on 28.3.2017.
5. The Applicant also sought an order restraining the two administrators from dealing in any manner whatsoever with and/or interfering with the Applicant’s stay in the Property known as LR No. 209/3777 (hereafter referred to as the Suit Property) at South C pending the hearing and determination of the Application.
6. The Application is supported by the Affidavit of the Applicant of even dates in which it is deposed that she is a daughter in law of the deceased and that she resides at the Suit Property with her two sons and a daughter.
7. She also said in her affidavit that the letters of administration were obtained fraudulently.
8. The Petitioners filed a Replying Affidavit dated 16.11.2018 in which he deposed that the Applicant is the former widow of the deceased’s son SYED KHURRAM ALI SHAH (deceased) and that upon the demise of her husband she continued staying with the deceased.
9. Further, that the Applicant applied for Letters of Administration in respect of her husband SYED KHURRAM ALI SHAH (deceased) vide HCSC No. 2017 of 2013 and she took exclusive control of her husband’s estate for her benefit and for the benefit of her children.
10. The Petitioners said the Applicant has the following children.
 1. SIBTE HASSAN SHAH – born 14.1.1988
 2. SHAHRUKH ALI SHAH – born 23.9.1992
 3. SAQLAIN ALI SHAH – born on 11.9.1998
11. The Applicant filed a Further Affidavit dated 13.12.2018 to which the Petitioners filed a further reply dated 22.3.2019.

12. The Applicants in the Application dated 22.6.2018 have not been keen to proceed with the said Application. The Petitioners urged the Court to dismiss the said Application.

13. However, I find that the parties live in the same house and dismissing the Application will not resolve the dispute.

14. I have perused the Affidavits filed here and according to the Petitioners, the deceased herein died a Muslim but the Jurisdiction of this Court is not in dispute.

15. The Petitioners have stated that the Estate should be administered and distributed in accordance with the principles of Islamic Law.

16. They further stated in their Reply to Further Affidavit that the Doctrine of representation is not recognized under Islamic Law as upheld in the Court of Appeal case of SAIFUDEN MOHAMED ALI NOORBHAI V SHAH NAZABDE HUSSEIN ADAMJI [2011] eKLR.

17. I find that in the circumstances, the best place to determine the dispute herein is at the Kadhi's Court.

18. The dispute herein goes beyond the distribution of the estate and touches on the personal status of the parties.

19. Under Article 170 (5) of the Constitution of Kenya 2010, the jurisdiction of the Kadhi's court is defined as follows;

“170 (5) The jurisdiction of a Kadhi's court shall be limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's courts”.

20. I refer this matter to the Kadhi's Court for a determination on the personal status of the parties and the distribution of the Estate.

21. The Deputy Registrar of this Court is directed to forward this case to the Kadhi's Court.

22. After the determination the file will be brought back for adoption.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 1ST DAY OF OCTOBER, 2019

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.