



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO.455 OF 1996**

**IN THE MATTER OF THE ESTATE OF SADDIQ BHOLA (DECEASED)**

**RASHID MUGHAL.....1<sup>ST</sup> APPLICANT**

**MOHAMMED RAFIQ.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**MOHAMMED SHABIR BHOLA.....RESPONDENT**

**RULING**

The late Saddiq Bhola died on 10<sup>th</sup> March, 1996 and the grant of letters of administration of his estate issued to his two sons Mohammed Hanif Bhola and Mohammed Shabir Bhola. The grant was subsequently confirmed on 6<sup>th</sup> December, 2000.

Mohammed Hanif Bhola, the 1<sup>st</sup> administrator died on 18<sup>th</sup> May, 2007. Ten years after the grant was confirmed, the surviving administrator, Mohammed Shabir Bhola has brought summons for the rectification of the grant. At the same time two of his brothers, Mohammed Rafiq and Rashid Mughal have also filed summons for the revocation of the grant. By consent the two applications were argued together. This ruling therefore, relates to the two applications.

The first application seeking the rectification of the grant is premised on the grounds that the grant as confirmed does not have a schedule of the properties and how they are to be distributed; that the deceased left a written will; that all the beneficiaries have consented to the distribution of the four (4) parcels of land in Rumuruti and Maralal to the effect that the same be inherited by the surviving administrator, Mohammed Shabir Bhola.

The second application on the other hand seeks that the grant issued and subsequently confirmed on 6<sup>th</sup> December, 2000 be revoked for the reasons that the proceedings to obtain the grant were defective in substance; that the full inventory of assets forming part of the estate of the deceased was not disclosed; that the grant does not distribute the estate among the deceased's rightful beneficiaries; that the surviving administrator has failed, neglected and/or refused to administer the estate diligently and also failed to render a full account; that close to 15 years after the death of the deceased, his estate has not been distributed.

In reply to this application the surviving administrator has deposed that the deceased having expressed his wish in an unexecuted will and the applicants having received part of the estate in accordance with their wishes and the wishes of the deceased, the applicants cannot be heard to seek to benefit from the net estate.

The certificate of confirmation of a grant is certainly not in conformity with the provisions of **Section 71** of the **Law of Succession Act** and **Rules 40** and **41** of the **Probate and Administration Rules**. As a general rule, all the dependants must give their consent for the grant to be confirmed and the distribution of the estate in the manner proposed.

Secondly, upon confirmation of the grant, in an intestacy, the identities and the respective shares of all persons beneficially entitled to the estate must be specified. There is no doubt that this cause has been brought as an intestate cause, the purported last written will of the deceased having not been executed by him before his death. The certificate of confirmation does not identify the deceased person's dependants, his estate and the respective shares to each dependant.

To that extent, the surviving administrator is justified in seeking to rectify the grant, However, in view of the application for revocation, that rectification will be subject to what I will be saying with regard to the application for revocation. A grant may be revoked, whether or not confirmed if, among other grounds the proceedings to obtain it were defective in substance, or if obtained fraudulently by false statement or concealment of something material or by means of untrue allegation of a fact or if the administrator has failed to, among other things, proceed, diligently with the administration of the estate.

The applicants have alleged that the surviving administrator has failed to diligently administer the estate; that the proceedings to obtain the grant were defective in substance. I have already noted that **Section 71** of the **Law of Succession Act** and **Rules 40** and **41** of the **Probate and Administration Rules** were not complied with in terms of inventory of assets, beneficiaries and their respective shares as well as consents of the dependants.

On 8<sup>th</sup> August, 1966 when the applicants are alleged to have received their share of the estate, the grant had not been confirmed. As a matter of fact, the petition in this cause had not even been filed. **Section 55(1)** of the **Law of Succession Act** provides that:

**“55(1) No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed as provided by section 71.”**

It is not clear how the administrators even accessed the deceased person's bank accounts without a grant. The applicants have further deposed that the extent of the estate has not been fully disclosed and they have given examples of livestock, vintage cars, a business enterprise, (Bhola and Sons), bank accounts, share in stock and other parcels of land in Nakuru.

For these reasons, the grant is revoked. However, given the age of the cause, the surviving administrator is granted leave to file a fresh summons for confirmation which must comply with the law. Being a family matter, I make no orders as to costs.

**Dated, Signed and Delivered at Nakuru this 4<sup>th</sup> day of March, 2011.**

**W. OUKO  
JUDGE**