



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
MISCELLANEOUS APPLICATION NO. E223 OF 2021
ARISING FROM SUCCESSION CAUSE NO. 301 OF 1960

IN THE MATTER THE ESTATE OF BHAGWANJI THAKRAR
(DECEASED)

ANJIL LAXMIKANT BHAGWANJI THAKRAR 1st
OBJECTOR
RAJNIBALA LAXMIKANT THAKRAR 2nd
OBJECTOR

VERSUS

HIMANSHU MUKUND THAKRAR
RESPONDENT

RULING

1. The Respondent herein Himanshu Mukund Thakrar filed an application dated 24th November 2021 seeking the following orders:-
 - (a) That the grant of probate made to the late Mohanlal Bhagwanji Thakrar and Laxmikant**

Bhagwanji Thakrar on 30th November 1960 be and is hereby revoked.

- (b) That a grant of letters of administration *de bonis non* with Will of the estate of Bhagwanji Gordhandas Thakrar (deceased) do issue to Himanshu Mukund Thakrar as an Administrator.**
- (c) That the Court do thereafter confirm the grant of letters of administration *de bonis non* with Will of the estate of Bhagwanji Gordhandas Thakrar (deceased) to be distributed in accordance with the Will of Bhagwanji Gordhandas Thakrar (deceased).**
- (d) That an order be and is hereby issued against Rajniben Laxmikant Thakrar compelling her to surrender to this Court all documents pertaining and necessary to facilitate the proper administration of the estate of Bhagwanji Gordhandas Thakrar deceased, to wit;**
 - (i) The original written Will of Bhagwanji Gordhandas Thakrar (deceased).**
 - (ii) The original confirmed grant of probate to the estate of Bhagwanji Gordhandas Thakrar (deceased) issued on 30th November 1960 to the late Mohanlal Bhagwanji Thakrar and the late Laxmikant Bhagwanji Thakrar.**

- (iii) The original death certificates of the late Bhagwanji Gordhandas Thakrar Mohanlal Bhagwanji Thakrar and Laxmikant Bhagwanji Thakrar.**
- (iv) Certified copies of the Will of the late Ladkibai Bhagwanji Thakrar, Mohanlal Bhagwanji Thakrar and Laxmikant Bhagwanji Thakrar.**
- (v) The original certificate of title to all that parcel of land known as No. 4653/LR No. 209/2232/4 located in Ngara area Nairobi.**
- (e) That an order be and is hereby issued directing Rajniben Laxmikant Thakrar to render a true and full account of the estate of Bhagwanji Gordhandas Thakrar (deceased) since the death of Laxmikant Bhagwanji Thakrar on 28th January 2009 to date.**
- (d) Costs in the cause.**

2. The application is supported by the Applicant's/Respondent's sworn affidavit of even date as well as the grounds on the face of the application.
3. The application provoked a protest from the Protestors who proceeded to file affidavits of protests as well as cross petition.
4. The Respondent in his affidavit of support has given a chronology and the history of this matter right from the deceased herein who was married to Ladkibai Bhagwanji Thakrar and were blessed with several children.

5. The Respondent is a grandchild to the deceased herein. The deceased left a Will dated 12th July 1956 and he died on 29th July 1960.
6. In his Will he named Mohanlal Bhagwanji Thakrar and Laxmikant Bhagwanji Thakrar as his executors. In the said Will he indicated how the estate was to be divided equally among his children and indeed from the narrative the same was done.
7. Unfortunately, both the executors have since passed on without completing the executorship of the estate and in particular the Ngara property.
8. The application basically is to complete the exercise and that is the reason why the Respondent is seeking the said orders.
9. On her part the Objector Rajniben Laxmikant Thakrar has signed a consent allowing Anjil Laxminkant Thakrar to represent her in this matter as the widow and executor of the estate of Laxminkant Bhagwanji Thakrar.
10. She is the daughter of the late Laxmikant Bhagwanji Thakrar and one of the beneficiaries of his estate. She mentions that Bhagwanji Thakrar passed away on **29th July, 1960**, leaving behind a Will that named his sons, Mohanlal and Laxmikant Bhagwanji Thakrar, as executors.
11. The Will specified that his personal belongings should go to his wife, Ladkibai Bhagwanji Thakrar, while the rest of the estate was to be sold off and shared among his wife and children.

12. After Ladkibai's passing, her share was divided equally among their seven children. Later, Mohanlal Bhagwanji Thakrar also passed away, leaving a Will that appointed Laxmikant Bhagwanji Thakrar as both executor and beneficiary.
13. When Laxmikant Bhagwanji Thakrar died on **29th January, 2009**, part of the estate, including land in Ngara, was still unadministered. The Protestor goes on to assert that the late Laxmikant Bhagwanji Thakrar took on various financial responsibilities related to the estate and family, such as paying off mortgages and overdrafts, settling loans, covering educational and medical expenses for his siblings and handling land rates and other property costs from his own funds.
14. She argues that these obligations should still be linked to the estate. Anjli believes she has been actively involved in managing the property and is in the best position to oversee the remaining estate for the benefit of all beneficiaries.
15. Therefore, she opposes the confirmation of the grant in favour of Himanshu Mukund Thakrar, claiming he doesn't have enough knowledge about the estate's history, lives abroad and would create unnecessary administrative costs that could harm the other beneficiaries.
16. Anjli Laxmikant Bhagwanji Thakrar as stated earlier has filed a cross petition for appointment as administrator for

de bonis non, dated **28th August, 2023** and supported by affidavit sworn by her on the same date.

17. She states that she is a granddaughter and beneficiary of the estate of the late Bhagwanji Thakrar, who died on **29th July, 1960** leaving a will appointing his sons Mohanlal Bhagwanji Thakrar and Laxmikant Bhagwanji Thakrar as executors.
18. Under the Will, the deceased's personal effects were bequeathed to his wife, Ladkibai Bhagwanji Thakrar, while the remainder of the estate was to be liquidated and distributed equally among the widow and the children. Upon the death of the widow, her share was distributed among the seven children.
19. Subsequently, Mohanlal Bhagwanji Thakrar died leaving a Will appointing Laxmikant Bhagwanji Thakrar as executor. Laxmikant Bhagwanji Thakrar later died on **28th January, 2009** leaving a will appointing Rajinibai Laxmikant Thakrar and the cross-petitioner as executors.
20. However, part of the estate of Bhagwanji Thakrar, particularly **L.R. No. 4451** situated in Ngara, Nairobi, remained unadministered following the death of the executors. She avers that the late Laxmikant Bhagwanji Thakrar personally settled numerous liabilities connected to the estate and the family, including repayment of mortgages, overdrafts and other loans secured over the property, payment of education and medical expenses for family

members and settlement of land rates and maintenance costs.

21. Himanshu Mukund Thakrar has opposed the cross petition vide replying affidavit sworn on **30th October, 2023**.
22. He avers inter alia that the application is made belatedly and is intended to delay the administration of the estate, noting that the Applicant waited for an extended period after filing the application without pursuing its determination. He disputes the assertion that the Applicant possesses superior knowledge of the estate and contends that, as a creditor and beneficiary of the estate, the determination of alleged liabilities must be undertaken through proper legal processes rather than by a prospective administrator accepting claims without verification.
23. He further states that the remaining unadministered asset relates to **L.R. No. 4451** situate at Ngara, Nairobi, whose beneficial interests devolved through the deceased's children and subsequent estates. According to him, he presently holds a majority beneficial interest of approximately **51.4%** of the unadministered estate, while the Applicant holds about **42.85%**, thereby making him the most suitable person to administer the estate.
24. The Respondent also disputes several claims made by the Applicant regarding loans, medical expenses, land rates and other liabilities allegedly settled by the late Laxmikant Bhagwanji Thakrar, contending that the annexed

documents do not establish payment or legal liability on the part of the estate and that any such claims are either unproven or time-barred under the Limitation of Actions Act.

25. He further avers that some alleged expenses were personal payments made voluntarily and not debts recoverable from the estate. Additionally, he maintains that the Applicant has been largely disengaged from the management and administration of the estate for many years, whereas he has actively participated in the succession proceedings and possesses the requisite knowledge and documentation relating to the estate.
26. Consequently, he asserts that he is better suited to be appointed administrator *de bonis non* so as to complete the administration of the estate in accordance with the will and applicable law.
27. Anjali Laxmikant Bhagwanji Thakrar has filed a further affidavit sworn on **3rd October, 2023** in response to the replying affidavit above.
28. She avers *inter alia* that she reiterates the contents of her affidavit of protest dated **23rd June, 2023**. She contends that neither she nor her mother were executors or trustees of the estate of Bhagwanji Thakrar (deceased) and therefore cannot be faulted for any alleged failure in the administration of the estate.
29. She explains that her involvement with the property was limited to paying land rates and rents at the request of her

late father, who was the executor and that such responsibility did not confer broader fiduciary obligations. She further disputes allegations that she or members of her family contributed to the deterioration or mismanagement of the property, noting that the house has remained largely unoccupied for several years and that any claims regarding its condition must be supported by evidence.

30. The Applicant also maintains that claims by creditors of the estate cannot be dismissed as time-barred because the will created a trust in respect of the estate assets and administration remains incomplete. She argues that, in such circumstances, the provisions of the Limitation of Actions Act relating to limitation periods do not apply to actions by beneficiaries seeking recovery of trust property or proceeds in the hands of a trustee.
31. She further asserts that the estate's liabilities arose from the continuing administration of the estate and must be properly considered before distribution. The Applicant denies assertions that the property was leased by the family of the late Laxmikant Bhagwanji Thakrar, and challenges the Respondent's account of the beneficial interests in the estate, contending that he has misrepresented the distribution of shares among the beneficiaries.
32. According to her, she represents approximately **45.7%** of the estate interest through consents from other

beneficiaries and is therefore better suited to be appointed administrator *de bonis non*.

33. She further accuses the Respondent of presenting misleading facts and acting in his own personal interest, arguing that such conduct undermines confidence in his suitability to administer the estate.
34. She asserts that the Court's role in succession proceedings is to ascertain the assets and liabilities of the estate and ensure that legitimate liabilities are settled before the net estate is distributed to beneficiaries.
35. Consequently, she opposes the confirmation of the grant in favour of Himanshu Mukund Thakrar and urges the court to appoint her as administrator *de bonis non* so that the remaining administration of the estate may be concluded.
36. The Applicant has filed written submissions dated **5th June, 2025** and the Respondent has filed written submissions dated **24th June, 2025**.

ANALYSIS AND DETERMINATION

37. I have read the protest, cross petition, the responses thereto and the rival submissions and it is evident that this matter has remained in the corridors of justice perhaps the longest in our registry.
38. The issue before this court and which must be settled by the parties is the conclusion of their patriarch's estate which his children were unable to finalise. It is therefore

the duty of the grandchildren to ensure that it is successfully done.

39. In In re Estate of Waigwa Wachira- Deceased [2017] KEHC 7917 (KLR) the court pronounced itself as follows: ***“Rule 20 of the 5th schedule of the Law of Succession Act CAP 160 Laws of Kenya provides for grant of assets unadministered in the following terms; If the executor to whom probate has been granted has died, leaving a part of the testator’s estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate. The first thing I note is that neither the Law of Succession Act nor the Probate & Administration rules use the term grant de bonis non administratis. I cannot see why, for sake of simplicity, and sticking to the rule, we cannot just use the term ‘unadministered estate’. I can imagine the un-represented petitioner struggling with the term, knowing what she wants from the court, and wondering she cannot just ask exactly what she is seeking from the court. The term may sound nice rolling off the tongues of ‘learned friends’ but I am of the view that it simply adds an un-necessary mystique to this process. I have not found a specific provision relating to an intestate estate as rule 20 of the 5th schedule of the Law of Succession Act CAP 160 Laws of Kenya refers to a testator’s estate.*”**

However, a google search at Kenyalaw.org has brought up numerous cases from both sides of the divide where judges have issued this grant with respect to intestate estates. The purpose of this type of grant is basically for the completion of the administration of the estate upon the death of the administrator. In re Estate of Rolf Rainer Schmid (Deceased) [2017] eKLR, Musyoka J. stated at paragraph 6 Essentially, upon the death of the executrix herein before completion of the administration of the estate, the next course of action should be to apply to the court for a grant of representation de bonis non, limited to completion of administration. See in the Matter of the Estate of Hannah Njoroge Njuki (Deceased) Nairobi HCSC No. 453 of 1997. In his book, Law of Succession [i]the said Justice Musyoka, at page 136 gives the brief facts of the case he has cited above- ... the grant of letters had been made to the deceased's husband who subsequently died before completing the administration of the estate. Her son brought an application seeking the removal of the deceased administrator's name and its substitution with his. The court directed that where an administrator dies and the estate is not fully administered, any of the beneficiaries might file for letters de bonis non."

40. The central issue for determination in this matter is who between the parties is the most suitable person to be appointed administrator *de bonis non* to complete the administration of the estate of the late Bhagwanji Thakrar, the administration having remained incomplete following the death of the executors previously appointed under the Will. Under the principles governing probate administration, the court retains discretion in appointing an administrator *de bonis non* where the original executor dies leaving part of the estate unadministered. In exercising that discretion, the guiding principles are considerations such as the best interests of the estate, the proximity of the parties to the estate, their knowledge of the estate affairs, their ability to act impartially and efficiently and the need to safeguard the interests of all beneficiaries.
41. The protestor and cross-petitioner contend that she has been closely involved in matters relating to the estate and that her late father, the former executor, settled several liabilities connected to the estate which ought to be considered before distribution. She further argues that the Respondent lacks adequate familiarity with the history of the estate and resides abroad, which may hinder effective administration.
42. Conversely, the Respondent disputes the alleged liabilities and asserts that they are either unproven or statute-barred. He further contends that he holds the majority

- beneficial interest in the unadministered estate and is therefore better placed to complete the administration.
43. These competing positions reveal that the dispute between the parties largely revolves around questions of estate liabilities, beneficial shares and suitability for appointment as administrator.
 44. It is evident that the estate has remained partially unadministered for a considerable period and that the remaining property, **L.R. No. 4451 Ngara - Nairobi**, requires proper administration and eventual distribution.
 45. The claims relating to liabilities allegedly settled by the late Laxmikant Bhagwanji Thakrar raise evidentiary questions which cannot conclusively be determined at this stage and would properly fall for consideration during the administration process where accounts can be rendered and verified. What is therefore paramount is the appointment of a person capable of ensuring transparent administration, safeguarding the estate assets and facilitating the eventual resolution of any claims against the estate in accordance with the law.
 46. The prayers for revocation of the 1960 grant holds water since under section 76 of the Succession Act the grant can be revoked if it has become useless and inoperative following subsequent circumstances such as where the sole administrator dies leaving behind no administrator to carry out the exercise.

47. In this case all the executors have since passed on and it is therefore necessary to appoint those who will complete the unadministered part of the estate.
48. Regarding the claims by the protestor that she ought to be reimbursed by the estate just because her late father, executor expended some money on behalf of the estate and the deceased the same for now does not hold water. This is purely a succession matter and if there is any liability then the same is to be proved elsewhere i.e., the commercial court and thereafter bring it as a decree against the estate.
49. Finally, who between the two should be allowed to complete the estate? I have carefully weighted the arguments for and against each other but one common ground of convergence is that they are both grand children of the deceased herein. Save for the fact that the Protestor is claiming some credit from the estate on behalf of her late father and which I have explained above she has equal rights just as the Applicant as provided under Section 63 and 65 of the Act.
50. In view of the observations made above I doubt whether distances in this digital age matter so much, so that whether a party is in Australia as the case herein and or Kenya ought to be of much consideration.
51. Nonetheless if in the cause of carrying out the mandate given it is established that the distance is a bar to the

administrator, then the court can be moved to carry out the necessary remedy.

52. I think I have stated much to show that it is in the interest of the estate that the two parties (grandchildren) be allowed to carry out the exercise. If they are unable to because of their rivalry or any other exigencies the court can be moved by any other beneficiary.

53. At the same time taking into consideration the age of this matter and in particular that it has seen decades without being completed I shall impose a time frame for the executors to finalise the exercise. If they do not then the rest of the beneficiaries can move the court.

54. **In the premises and in ruling on both the application and the protest I direct that:**

(a) Himanshu Mukund Thakrar and Anjli Laxmikant Bhagwanji Thakrar are hereby appointed joint administrators *de bonis non* of the estate of the late Bhagwanji Gordhandas Thakrar and the grant of probate made to the late Mohanlal Bhagwanji Thakrar and Laxmikant Bhagwanji Thakrar on 30th November 1960 is hereby revoked.

(b) The two joint Administrators pursuant to the orders above shall within 90 days from the date herein distribute the unadministered estate herein in accordance with the deceased will dated 12th July 1956.

(c) This matter shall be mentioned before the Deputy Registrar of this court within 90 days to confirm compliance.

(d) Costs in the cause.

**Dated signed and delivered via video link at Nairobi
this 19th day of March 2026.**

**H K CHEMITEI
JUDGE**