



REPUBLIC OF KENYA



**In re Taplelei Chelangat Chemaigut (Deceased) and Sigei Tabutany Chemaigut (Deceased)  
(Succession Cause 29 of 2019) [2024] KEHC 11325 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11325 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 29 OF 2019**

**JK SERGON, J**

**SEPTEMBER 26, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE TAPLELEI CHELANGAT  
CHEMAIGUT (DECEASED) AND SIGEI TABUTANY CHEMAIGUT (DECEASED)**

**BETWEEN**

**ROSE CHEPKOSGEI CHEPKWONY ..... 1<sup>ST</sup> PETITIONER**

**LIDWIN CHEPKEMOI TOO ..... 2<sup>ND</sup> PETITIONER**

**AND**

**ANDREW KIPSIGEI TOO ..... APPLICANT**

**RULING**

1. The application coming up for determination is a chamber summons dated 28th September, 2023 seeking the following orders;
  - (i) Spent
  - (ii) That this honourable court do cause the legal representative of the 1st petitioner Rose Cheopkosgei Chepkwony who is deceased to be substituted and Andrew Kipsigei Too be made party in place of the said petitioner and proceed with this suit on behalf of Rose Chepkosgei Chepkwony (deceased).
  - (iii) That this honourable court be pleased to grant an order that Rose Chepkosgei Chepkwony (deceased), the 1st petitioner herein be substituted with Andrew Kipsigei Too brother of the deceased.
  - (iv) That such other or further directions be given by this honourable court to meet the ends of justice.
  - (vi) That the costs of this application be in the cause.



2. The application is supported by grounds on the face of it and the supporting affidavit of Andrew Kipsigei Too the applicant herein.
3. The applicant avers that he is the brother of the deceased Rose Chepkosgei Chepkwony, the 1st petitioner herein who died on 10th June, 2023 pending transmission of the estate property.
4. The applicant avers that the petitioners were issued with a certificate of confirmation of grant over the estate of the deceased on 1st July, 2022.
5. The applicant further avers that it is therefore imperative that he take over and prosecute the instant succession matter by way of substitution in order to facilitate the expeditious disposal of the suit.
6. I have considered the application which is unopposed and I find that the sole issue for determination is whether this court can make an order for substitution in the instant succession suit. The answer is in the negative.
7. The *Law of Succession Act* does not expressly provide for substitution of personal representatives who die in office, particularly in cases where the estate is left without one. The closest provision is section 81 of the Act, which provides for vesting of the powers and duties of personal representatives in the survivor or survivors of a dead personal representative. The provision provides as follows –

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executor or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.” What is envisaged by section 81 of the Act is that, in the event of the death of one or more of joint administrators, where there are several administrators, the surviving administrator or administrators would then have the mandate to continue with their duties to completion without the need to replace the deceased ones.”
8. In the same line of thought, Hon. Musyoka J. held as follows in *Re Estate of George Ragui Karanja (Deceased)* [2016] eKLR: “The *Law of Succession Act* does not expressly provide for substitution of personal representatives who die in office, particularly in cases where the estate is left without one. The closest provision is section 81 of the Act, which provides for vesting of the powers and duties of personal representatives in the survivor or survivors of a dead personal representative... It would appear to me that once all the holders of a grant die, section 81 of the Act would be of no application. Indeed, the said grant becomes useless and inoperative, and liable to revocation under section 76 (e) of the *Law of Succession Act*, to pave the way for appointment of new administrators. The appointment of fresh administrators to take the place of the previous ones following their death is subject to the provisions of sections 51 through to section 66 of the Act.”
9. In the case of *Florence Okutu Nandwa & Another vs. John Atemba Kojwa*, Kisumu Civil Appeal No. 306 of 1998, the Court of Appeal made it clear that: “A grant of representation is made in personam. It is specific to the person appointed. It is not transferable to another person. It cannot therefore be transferred from one person to another. The issue of substitution of an administrator with another person should not arise...”
10. In the light of the foregoing, it is manifest that the application dated 28th September, 2023 though unopposed, is untenable. The same is hereby dismissed with costs being in the cause.



**DELIVERED, SIGNED AND DATED AT KERICHO THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

**J.K. SERGON**

**JUDGE**

**In the Presence of:-**

C/Assistant – Rutoh

No Appearance for the Parties

