



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Daniel Kennedy Sultani Aganyanya (Deceased) (Succession Cause E002 of 2021) [2024] KEHC 11458 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11458 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
SUCCESSION CAUSE E002 OF 2021**

**JN KAMAU, J**

**SEPTEMBER 25, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE JUSTICE  
DANIEL KENNEDY SULTANI AGANYANYA (DECEASED)**

**RULING**

1. In her Chamber Summons application dated 5<sup>th</sup> September 2023 and filed on 27<sup>th</sup> September 2023, the 1<sup>st</sup> Petitioner herein sought for orders that Schedule C of the Rectified Grant be affirmed and that the rectified Grant be rectified further to delete item XX(ii) being the widow's pension benefit erroneously described as widow's pension/gratuity as an item falling for inheritance and distribution amongst the natural children of the deceased either in equal shares or as deemed fit in the succession proceedings as previously erroneously directed in the rectified grant.
2. She further prayed that Schedule C in the said Rectified Certificate of Confirmation barring the deceased's beneficiaries from inheriting her estate upon her demise be confirmed.
3. On 25<sup>th</sup> March 2024, the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioner swore a Replying Affidavit in opposition to the 1<sup>st</sup> Petitioner's application herein. The same was filed on 28<sup>th</sup> March 2024.
4. The 1<sup>st</sup> Petitioner's Written Submissions dated 12<sup>th</sup> February 2024 and Supplementary Written Submissions dated 11<sup>th</sup> April 2024 were both filed on 24<sup>th</sup> May 2024 while the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioner's Written Submissions were dated 25<sup>th</sup> March 2024 and filed on 28<sup>th</sup> March 2024. The Ruling herein is therefore based on the said Written Submissions that all parties relied upon in their entirety.

**Legal Analysis**

5. This court considered the respective parties' Written submissions and noted that the same arguments had been advanced in respect of the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners' Notice of Motion application that was dated and filed on 28<sup>th</sup> July 2023 and this court delivered Ruling No (1). This court did not therefore find it useful to set out the arguments and counter-arguments in this Ruling so as to use scarce judicial time efficiently but noted that the same applied mutatis mutandis to the arguments that were advanced in Ruling No (1).



6. In its said delivered Ruling No (1) relating to deletion of xxii in the Rectified Certificate of Grant being the widow's pension benefit erroneously described as widow's pension/gratuity stated to be shared equally amongst the natural children of the deceased be deleted as an item from the Rectified Certificate of Grant, this court found the same to have been merited.
7. Just like this court had found in its Ruling No (1) herein in respect of the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners' Notice of Motion application dated and filed on 28<sup>th</sup> July 2023, this court found and held that the 1<sup>st</sup> Petitioner herein had exclusive entitlement of the deceased's pension as she was the lawful surviving wife of the deceased and the deceased's children were above twenty-one (21) years of age. In addition, the deceased's children, who included the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners herein could only access the pension in the event she died or remarried.
8. Indeed, Section 17 of the Pensions Act Cap 189 (Laws of Kenya) provides that:-
  1. Subject to the other provisions of this Act—
    - a. where an officer who has had ten or more years' service dies after he has retired from the service of the Government having been granted a pension under this Act, there shall continue to be paid a dependants' pension, on the terms and subject to the conditions set out in subsection (2), to the widow or the children of the officer for a period of five years next following the date of the officer's death, at the rate of the officer's pension at the date of his death;
    - b. where a pensionable officer who has served the Government for ten or more years dies while in the service, the President may grant to the widow or the children of the officer, in addition to any grant made under Section 18, a dependants' pension, on the terms and subject to the conditions set out in subsection (2), for a period of five years next following the date of the officer's death at a rate not exceeding the amount of any pension that could have been granted to the officer if he had retired on medical grounds on the date of his death:

Provided that in the event of a widow to whom a dependants' pension has been granted under the provisions of this subsection dying or otherwise ceasing to be entitled to the pension, the child or children who are entitled, in accordance with the terms and conditions set out in subsection (2), to a dependants' pension shall be entitled in accordance with those terms and conditions to receive the dependants' pension for the remainder of the period of five years from the officer's death which is still outstanding at the date on which the widow dies or otherwise ceases to be entitled to the dependants' pension.
9. Similarly, as this court had also found, it would be imprudent, unjust and/or unlawful to affirm Schedule C of the Grant to disinherit the deceased's children from her estate in case of her demise because step children have a right to inherit from their step parent in their unfortunate demise. Schedule C of the Certificate of Confirmation had disinherited them contrary to the provisions of the law.
10. Notably, Section 29 of the Law of Succession Act defines who a dependant is. It reads as follows:

“For the purposes of this Part, "dependant" means:-

  - a. the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;



- b. such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- c. where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”
- d. Rectification of grants is provided for in Section 74 of the Law of Succession Act and Rule 43(1) of the Probate and Administration Rules.
- e. Section 74 of the Law of Succession provides as follows:

“Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”
- f. Rule 43(1) of the Probate and Administration Rules provides that:-

“Where the holder of a grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time or place of death of the deceased or, in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was made.”
- g. From the language of Section 74 of the Law of Succession Act and Rule 43(1) of the Probate and Administration Rules, the scope of rectification of grants of representation was limited to errors in names and descriptions, or in setting forth the time and place of the deceased's death as was held in the case of In the matter of the estate of Hasalon Mwangi Kahero [2013] eKLR or the purpose in a limited grant. Such other minor errors in that genre could also be rectified.
- h. As the entries the Petitioner wanted rectified did not fall under the provisions of Section 74 of the Law of Succession, to progress this matter, this court found and held that it could proceed to revoke the Grant of Letters of Administration Intestate under the provisions of 76 of the Law of Succession Act.
- i. The said Section 76 of the Law of Succession states that:-

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion (emphasis court) that the grant has become useless and inoperative through subsequent circumstances.”



11. This court could not discharge the Petitioners herein from being administrators of the deceased's estate until they had complied with Section 83(g) of the Law of Succession Cap 160 (Laws of Kenya) that provides as follows:-

“Personal representatives shall have the following duties—

within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.”

### **Disposition**

12. For the forgoing reasons, the upshot of this court's decision was that the 1<sup>st</sup> Petitioner's Chamber Summons application dated 5<sup>th</sup> September 2023 and filed on 27<sup>th</sup> September 2023 was partly merited as far as Prayer Nos (4) and (5) were concerned. The effect of this is that part the Prayer Nos (4) and (5) be and are hereby allowed while Prayer Nos (3) and (6) be and are hereby dismissed.
13. The Rectified Certificate of Grant dated 27<sup>th</sup> October 2022 be and is hereby revoked forthwith to delete and/or omit xxii Pension/ Gratuity from the assets to be distributed to the deceased's children and Schedule C in its entirety.
14. It is hereby directed that a fresh Certificate of Grant reflecting the changes be issued forthwith.
15. As this was an emotive family cause, this court deemed it fit not to award costs to any party so as to preserve the family ties. Each party will therefore bear its own costs.
16. Matter to be mentioned on 10<sup>th</sup> March 2025 to confirm compliance with Section 83(g) of the Law of Succession Cap 160 (Laws of Kenya) and/or for further orders and/or directions.
17. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2024**

**J. KAMAU**

**JUDGE**

