



**In re Estate of Mohamed Said Suleiman Al-Busaidy (Deceased) (Probate & Administration 31 of 1988) [2024] KEHC 16885 (KLR) (29 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 16885 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
PROBATE & ADMINISTRATION 31 OF 1988  
G MUTAI, J  
NOVEMBER 29, 2024**

**BETWEEN**

**ILHAM MOHAMED SAID AL BUSAIDY AKA ELHAM MOHAMED SAID ..... APPLICANT**

**AND**

**SULEIMAN MOHAMED SAID SULEIMAN ..... RESPONDENT**

**JUDGMENT**

1. Before the court is the summons for revocation of grant dated 2<sup>nd</sup> February 2024, vide which the applicant seeks the following orders:-
  - a. That the grant of letters of administration intestate issued to Suleiman Mohamed Said Suleiman and Ali Mohamed Said Suleiman al-Busaidy on 14<sup>th</sup> June 2002 and confirmed on 10<sup>th</sup> October 2013 be revoked;
  - b. That the honourable court grant orders to appoint Elham Mohamed al-Busaidy, also known as Ilham Mohamed Said al-Busaidi, Said Mohamed Said al-Busaidi, also known as Said Mohamed Said al-Busaidy and Samih Mohamed Said al Busaidy also known as Samee Mohamed Said al-Busaidi as administration of the deceased;
  - c. That this honourable court be pleased to confirm the appointment of Elham Mohamed al-Busaidy, also known as Ilham Mohamed Said al-Busaidi, Said Mohamed Said al-Busaidi, also known as Said Mohamed Said al-Busaidy and Samih Mohamed Said al Busaidy also known as Samee Mohamed Said al-Busaidi as administrators of the estate of the deceased;
  - d. That this honourable court be pleased to issue any other order and or further orders as it deems fit and just in the circumstances; and
  - e. That the costs of this application be in the cause.



2. The applicant stated in the grounds in the body of the application, as well as in the supporting affidavit she swore on 2<sup>nd</sup> February 2024 that the respondent and the late Said Mohamed Said Suleiman al-Busaidy obtained the grant of representation in respect of the estate of the deceased on 14<sup>th</sup> June 2002. The said grant was confirmed on 10<sup>th</sup> October 2013. Despite the effluxion of time, the respondent, as the administrators of the estate, had failed, without a reasonable cause to proceed diligently with the administration of the estate and had not produced to court an inventory of the assets of the estate and statements of account as required by section 83 (e) and (g) of the [Law of Succession Act](#).
3. She averred that Ali Mohamed Said Suleiman al Busaidy was deceased while the remaining administrator had since resigned as an administrator vide letter dated 12<sup>th</sup> May 2023. Therefore, the grant issued by this court had become useless and inoperative. She, therefore, sought to have the said grant revoked due, in her reckoning, to mismanagement and an apprehension that the beneficiaries would be disinherited if the estate remained unadministered.
4. The applicant deposed that she was the daughter of the deceased. She stated that there were currently no administrators of the estate, and as such, the estate was in danger of being wasted away. Further, there were pending urgent matters that required the attention of the estate, which could not be dealt with unless administrators were appointed.
5. The application was opposed. Suleiman Mohamed Said Suleiman filed a replying affidavit sworn on 21<sup>st</sup> March 2024 in which he denied that he had failed in his duties as an administrator. He stated that he recovered important, relevant material and compiled 56 files, which he handed over to the applicant in April 2021. Mr Said Suleiman further stated that he also recovered Title No Mombasa/Block XVI/224, which had been taken over by the National Oil Corporation through a legal battle which took over 6 years to conclude, and that there were ongoing transactions regarding Title No Mombasa/Block XVII 1244 and Plot No 3021 Malindi.
6. Mr Suleiman deposed that he had actively sought to collect other assets of the deceased and had conducted meetings with tenants of Plot No. 211. He had also filed suits in Malindi and met officials at the National Land Commission to resolve some of the pending issues.
7. Mr Suleiman averred that he had resigned as an administrator, and all he wanted was to have a new administrator or administrators substituted. Revocation, in his view, would prejudice ongoing cases in particular, Malindi ELC No 21 of 2023 (OS) and Malindi No E044 of 2023. He, therefore, urged the court to exercise its discretion judiciously and substitute him with the proposed administrators.
8. The matter was heard by way of viva voce evidence. On 9<sup>th</sup> May, 16<sup>th</sup> September and 8<sup>th</sup> October 2024 when three witnesses testified for the objectors/applicants and one or the administrators/respondents.
9. The witnesses for the applicant, Amur Mohamed Said Busaidy, Iham Mohamed Said al-Busaidy and Khalid Ahmed Said al-Busaidy testified that the respondent resigned as an administrator. Although the witnesses agreed that he made some progress in the administration of the estate, they testified that he and the deceased co-administrator did not complete the administration of the estate of their deceased father and failed to provide an inventory of the assets forming the estate and had not filed the statements of account as required by law.
10. The three conceded that there had been family meetings during which the estate had been discussed. They proposed that three administrators be appointed in place of the respondent. The three witnesses stated that it would be fair and just if the grant was revoked as opposed to the respondent being substituted.



11. The respondent testified on 8<sup>th</sup> October 2024. He lives in Oman and partly in Lamu, Kenya. The respondent is a retired person. He relied on his replying affidavit sworn on 21<sup>st</sup> March 2024. Mr Suleiman al-Busaidy testified that he resigned in 2023. He stated that it would be best if he were substituted as administrator, as opposed to the grant being revoked. He prayed that the applicants be appointed as administrators of the estate so that they could substitute him to avoid the creation of a void. He denied that he was forced to resign and averred that he resigned of his own volition. In response to the allegation that he hadn't completed the administration of the estate, he stated that some of the deceased properties had squatters while others had leases that were about to expire and that it was impossible to distribute the estate wholly as some assets were not wholly within his control.
12. When cross-examined, he admitted that he hadn't filed a report. He was categorical that he does not object to the appointment of the applicants as administrators. All he wanted was that the appointment be by way of substitution and not by revocation.
13. Mr Suleiman al-Busaidy stated that he hadn't been asked to give statements of account in respect of the estate's accounts or that he refused to do so when asked.
14. At the conclusion of the viva voce hearing, the parties were asked to file written submissions.
15. The written submissions of the applicant are dated 14<sup>th</sup> October 2024. The applicant's counsel submitted that the issues for determination were;
  - a. Whether the grant dated 10<sup>th</sup> October 2013 should be revoked and a new grant issued and confirmed in its stead;
  - b. Whether the court should appoint new administrators; and
  - c. Whether the court has the power to substitute the administrators.
16. It was urged that the administrator had failed to administer the estate fully within 21 years that had lapsed and had not given reasons for failing to do so. He had instead opted to resign, leaving the estate unadministered. The effect of this, It was urged, was that the grant had become inoperative due to subsequent events. The applicants relied on the decision of the court in *re Estate of Kiminingwa Arap Kiboigut (deceased) [2021]eKLR* and *Julia Mutune M'mboroki v John Mugambi M'mboroki & 3 others [2021]eKLR*.
17. Regarding the issue of substitution of administrators it was submitted that such remedy isn't provided for in the rules of this court. Reliance was placed on the decisions of the court in the case of *John Katumwa Maina v Susan Wanjiru Mwangi [2021]eKLR* and *Julia Mutune M'mboroki v John Mugambi M'mboroki & 3 others [2021]eKLR*.
18. It was urged that this court should instead find that the grant had become useless and inoperative and appoint and confirm new administrators under section 51, as reads with section 66 of the [\*Law of Succession Act\*](#).
19. The submissions of the respondent are dated 17<sup>th</sup> October 2024. In the said submissions, it was urged that the effect of revocation of the grant is that the suits presently in court will be held in abeyance, awaiting the appointment of new administrators.
20. Counsel for the respondent submitted that there were 3 general grounds upon which the grant could be revoked. None of the 3 general grounds had, in his view, been shown. The counsel for the respondents submitted that none of the grounds advanced by the applicant justified the revocation of the grant.



21. Learned counsel urged that that applicant never claimed that the grant was issued based on misrepresentation of facts or fraud or concealment of material information or that it was obtained unprocedurally. Counsel sought to distinguish the decision of the court in the case of *Julia Mutune M'mboroki v John Mugambi M'mboroki & 3 others* [2021]eKLR on the grounds that the case had different facts; as the administrators in the cited case had died, while the grant was obtained fraudulently.
22. Counsel urged that no prejudice would be suffered by the applicant if the substitution was done, rather than revocation as she had sought.
23. I have considered the application and responses thereof and the evidence of the parties and the submissions made by the respective counsels.
24. It is evident that the administrators, having been issued with a grant on 14<sup>th</sup> June 2002, which grant was confirmed on 10<sup>th</sup> October 2013, haven't fully administered the estate. It emerged during the hearing that there was quite a lot of work that required to be done before the estate could fully devolve to the beneficiaries. Having made the above observation this Court notes that the administrators to their credit appear to have recovered a few assets of the deceased.
25. During the hearing the respondent admitted that he had resigned as an administrator. He, however, opposed the summons, praying instead that the court be pleased to substitute him with new administrators.
26. Section 76 of the *Law of Succession Act* provides for the revocation or annulment of a grant. It states that a grant may be revoked: -
  - (a) that the proceedings to obtain the grant were defective in substance;
  - (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
  - (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
  - (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
    - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
    - (ii) to proceed diligently with the administration of the estate; or
    - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
  - (e) that the grant has become useless and inoperative through subsequent circumstances.
27. Since it is admitted that the sole surviving administrator resigned, it is my view that the grant has become useless and inoperative. With the co-administrator, the resignation of the respondent frustrated the succession of the estate of the deceased herein. In such circumstances, the grant was, in fact, useless and inoperative and existed only in name. A grant that is useless and inoperative is for revocation under section 76 of the *Law of Succession Act*.



28. The respondent urged that rather than revoke the grant, the court should instead substitute him as an administrator with the 3 three proposed administrators. It does appear to me that administration of an estate is a duty imposed in personam on the person appointed and is not capable of being passed around like a heirloom, as the respondent appears to think. I will set out two decisions which, to me, settle this matter.
29. W Musyoka, J stated as follows in the case of *John Karumwa Maina v Susan Wanjiru Mwangi* [2015] eKLR:-
- “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. Where the holder of a grant dies, the grant made to him becomes useless and inoperative, and the grant exists for the purpose only of being revoked. Such grant is revocable under section 76 of the *Law of Succession Act*. Upon its revocation, a fresh application for grant should be made in the usual way, following procedures laid down in the *Law of Succession Act* and the Probate and Administration (Rules). I agree with the respondent that there cannot be a substitution of the dead administrator by his wife in the manner proposed by the applicant.”
30. In *Julia Mutune M’mboroki v John Mugambi M’mboroki & 3 others* [2021]eKLR, Gikonyo, J stated as follows:-
- “(8) Out of this entire judicial discourse, one fundamental issue of law has arisen; effect of death of a sole administrator on the grant. In my experience as a judge, one grave mistake I have seen being committed is to apply for substitution of the deceased administrator. In my understanding, substitution of a deceased administrator is not possible as the particular proceedings in which he had been appointed administrator do not relate to his estate. This explanation shows the folly of trying to substitute a deceased administrator. Courts have said time and again that, except where a grant is made to the Public Trustee or a Trust Corporation, a grant of letters of administration is issued in personam and is not transferable. See section 56 and 57 of the *Law of Succession Act*. I also think it is worth mentioning that the *Law of Succession Act* does not talk of substitution of administrator; it provides for making of a grant to another person or persons after revocation of grant or on the death of the administrator or on renunciation of right to apply or executorship etc...”
31. It is therefore evident that the court may not substitute the administrators but could revoke a grant and appoint other administrators in their stead in the exercise of its wide discretion under the *Law of Succession Act*.
32. In the circumstances, I revoke the grant issued on 14th June 2002 and confirmed on October 10, 2013 as it has become useless and inoperative.
33. I issued a new grant to Elham Mohamed al-Busaidy, also known as Ilham Mohamed Said al-Busaidi, Said Mohamed Said al-Busaidi, also known as Said Mohamed Said al-Busaidy and Samih Mohamed Said al Busaidy also known as Samee Mohamed Said al-Busaidi. The grant shall be confirmed forthwith.
34. I direct the new administrators to complete the administration of the estate within 6 months of the date hereof.



35. Mention on July 31, 2025 to confirm compliance and for further directions.

36. Orders accordingly.

**DATED AND SIGNED AT MOMBASA THIS 29<sup>TH</sup> DAY OF NOVEMBER 2024.**

**DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Mr Mitei, for the Applicant;

No appearance for the Respondent; and

Arthur – Court Assistant.

