



REPUBLIC OF KENYA



In re Estate of George Stephen Angadi Owuor (Deceased) (Miscellaneous Succession Cause E082 of 2024) [2024] KEHC 14809 (KLR) (22 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14809 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS SUCCESSION CAUSE E082 OF 2024**

RE ABURILI, J

NOVEMBER 22, 2024

IN THE MATTER OF THE ESTATE OF GEORGE STEPHEN ANGADI OWUOR (DECEASED)

AND

**IN THE MATTER OF AN APPLICATION BY
ORIENY OWUOR AN DWAYNE ROGO OWUOR**

(Arising from Kisumu HC Court Succession Cause No. 363 of 2013)

RULING

1. The application dated 30th October 2024 filed under certificate of urgency by Orieny Owuor And Dwayne Rogo Owuor seeks orders for substitution of the administrator of the state of the deceased's estate on account that the administratrix has since died before the grant was confirmed and the deceased's state distributed. I therefore find no urgency as the Succession Cause is of 2013. I decline to certify it as urgent.
2. On the substance thereof, I note that the applicants seek to be substituted in the place of the now deceased administratrix Winnie Auma Owuor who was issued with the grant of letters of administration intestate on 15th September 2013 to administer the estate of the deceased John Stephen Angadi Owuor and that upon such substitution, the grant be confirmed.
3. Regrettably, on perusal of the original Succession file No 363 of 2013, I have found that on 9th April 2018, the grant was revoked under Section 76(d) (i) of the [Law of Succession Act](#). There is therefore no grant capable of being confirmed.
4. Additionally, as the deceased administratrix was the sole administrator who has since died, there can be no substitution of a sole administrator. This is because a grant is issued in personam and not in rem and once the sole administrator dies, they die with the grant which becomes useless and cannot be passed onto another person. This position is fortified by judicial precedents below referred to by my



sister Judge L. Gitari J in the *In re Estate of Muroko Kimitu - (DCD)* [2019] eKLR, where she stated as follows and I concur, applying the principles espoused in the Court of Appeal decisions:

“On the issue of substitution of the petitioner I am guided by decisions of the High Court & Court of Appeal.

In *John Karumwa Maina v Susan Wanjiru Mwangi* [2015] eKLR the Court held:

In the case of *Florence Okutu Nandwa & another v John Atemba Kojwa*, Court of Appeal Civil Appeal in Civil Appeal No 306 of 1998 at Kisumu where it was held that a court should not issue a grant to a person who has not sought for it. The judge stated as follows:-

“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.”

Further in *Julia Mutune M'mboroki v John Mugambi M'mboroki & 3 others* [2016] eKLR the Court held:

“There is absolutely no room of substitution of the deceased administrator under the *Law of Succession Act*. In my view, therefore, where the sole administrator is a natural person, and he or she dies, the grant becomes useless or inoperative by reason of subsequent event of his demise...

Accordingly, in such case, the proper procedure is to apply for revocation of grant of letters of administration under section 76(e) of the *Law of Succession Act* on the reason that the grant has become useless and inoperative through subsequent circumstances and a grant to be made to another person named in the application.”

5. I agree with the observations made by the learned Judge that the decision by the Court of Appeal is binding on this Court and that there can be no substitution of an Administrator by way of filing an application for substitution. For one to be appointed an administrator, he must follow the process under the *Law of Succession Act* and the *Probate and Administration Rules*. Short of that, an administrator coming on record through an application for substitution will not be properly on record and the grant issued would easily be revoked as the proceedings to obtain it were defective in substance.
6. On the basis of the above holdings, I find and hold that this Court cannot substitute the deceased administratrix with the applicants herein.
7. Accordingly, the Application dated October 30, 2024 is hereby declined and dismissed, noting that already, the grant issued to the now deceased administratrix was revoked and therefore there are no proceedings upon which the orders sought can issue, assuming such orders would be available, had the grant as issued not been revoked way back in 2018.
8. The applicants are directed to petition for a fresh grant of letters of administration intestate to administer the estate of George Stephen Angadi Owuor (deceased).



9. The beneficiaries of the deceased's estate shall present to court as they petition afresh, this ruling for reference purposes.
10. This file is now closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 22ND DAY OF NOVEMBER, 2024

R. E. ABURILI

JUDGE

