



**In re Estate of Fredrick Nkanata Kagwura (Deceased) (Succession Cause
348 of 2015) [2023] KEHC 18084 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18084 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
SUCCESSION CAUSE 348 OF 2015**

LW GITARI, J

MAY 25, 2023

BETWEEN

LYDIAH K FREDRICK APPLICANT

AND

SABELLA MWARI FREDRICK 1ST RESPONDENT

JOYCE KAINDA MUTHURI 2ND RESPONDENT

JOSES MUTWIRI FREDRICK 3RD RESPONDENT

ZIPPORAH KARWIRWA 4TH RESPONDENT

AND

LYDIAH K. FREDRICK INTERESTED PARTY

RULING

1. This matter relates to the estate of Fredrick Nkanata Kagwura (deceased) who died intestate on 2/22/2008. A grant of letters of administration intestate was issued to Ester Fredrick Nkanata on 22/4/2014. The grant was later confirmed and issued on 11/10/2017. The estate of the deceased was distributed to his beneficiaries as per the said certificate of confirmation of grant.

By the summons for revocation of grant dated December 22, 2022, the applicant/interested party herein seeks for orders that:

- a. Spent.
- b. that this honourable court be pleased to grant leave for the firm of M/S WAKLAW Advocates to come on record for the applicant/interested party in the instant succession cause.



- c. That due to the demise of the administratrix in the instant succession cause, this honourable court be pleased to revoke the Grant of Letters of administration Intestate and Certificate of Confirmation of the said Grant issued to the Administratrix Esther Fredrick Nkamata on 22/04/2014 and 11/10/2017 respectively.
- d. That this honourable court be pleased to issue fresh Grant of Letters of Administration Intestate in respect of the deceased's estate under section 66 of the Law of Succession Act and the same be confirmed before the statutory period on account of the age of Instant Succession Cause.
- e. That The cost of this application be costs in cause.

The application is based on the following grounds:-

- a. That the administratrix in the instant succession cause died on 20/10/2018 and died before transmitting the deceased's estates as decreed on certificate of confirmation of grant issued by this honourable court on 11/10/2017.
 - b. That the grants issued to the Administratrix have become useless and inoperative on account of her demise.
 - c. That it is in the interest of justice that the grants issued to the deceased Administratrix be revoked and fresh grants be issued by this honourable court for fresh distribution of the deceased's estates.
 - d. That no prejudice may be occasioned to the Respondents/beneficiaries listed on certificate of confirmation of grant issued on 11/10/2017, if the orders sought are granted.
2. The application though served on all the respondent was not opposed. I have considered the summons. The issue that arises for determination is revocation of grant.
 3. Under section 76 of the Law of Succession Act, several grounds have been laid out upon which a grant of representation may be revoked. Of importance in this ruling is the ground is where a grant has become useless or inoperative, due to changed circumstances, such as where the sole grant-holder has died.
 4. For avoidance of doubt, section 76 of the Law of Succession Act states as follows:

“

“76. Revocation or annulment of grant

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—

- (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.”

5. In this case, it has been pleaded that the grant issued to the administratrix in this cause, Esther Fredrick Nkamata, has become useless and inoperative for the reason that the said administratrix is now deceased and that she died before transmitting the estate of the deceased herein.

6. Attached to the application and marked “LKF3” is a letter dated November 4, 2022 from the area chief of Kathera Location. The contents of the said letter indicate that the Administratrix herein, Esther Fredrick Nkamata, is deceased. This court has been invited to revoke the grant issued to the late Esther Fredrick Nkamata. The applicant has not attached a death certificate to prove the fact of the death of the administrator. However based on the averments by the applicant and the confirmation by the chief in the letter dated 4/11/2022 I have no doubt that the administratrix is deceased.

It follows that since the administratrix was the sole administrator the grant has become useless and in-operative through subsequent circumstances. Based on section 76(e) of the Law of Succession Act (supra) the grant issued to the deceased administratrix should be revoked.

7. For these reasons I find that this application has merits.

I allow the application and order as follows:-

1. The grant issued to the deceased administratrix on 22/4/2014 and confirmed 10/10/2017 is revoked.
2. Any of the beneficiaries to apply to be appointed as the administrator/administratrix of the estate of the deceased.

Dated, signed and delivered at Chuka this 25th day of May 2023.

L.W. GITARI

JUDGE

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