



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of the Late Joshua Bandi Kumanye (Deceased) (Succession Cause 738 of 2007) [2023] KEHC 21482 (KLR) (28 July 2023) (Ruling)

Neutral citation: [2023] KEHC 21482 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 738 OF 2007
SC CHIRCHIR, J
JULY 28, 2023**

RULING

1. Before this court is the summons dated November 14, 2022. It seeks for the revocation of grant issued to Sarah Musilibi Bandi and the issuing of fresh grant in the name of Yosiah Mikalo Bandi. The proceedings are in respect to the Estate of Joshua Bandi Kumanye (Deceased).
2. The applicant further seeks for review of the certificate of confirmation of Grant, made on February 16, 2011. The review sought is in respect to a portion of 1.01 acres out of land parcel No. Isukha/Lubao/210, earlier allocated to Jethro Masheti Bandi, who is now deceased. The applicant prays that the said portion be now be allocated to his wife Emmy Khangayi Musimba.
3. The summons is supported by the grounds appearing on the face of the Application as well as the affidavit of the applicant, Yosiah Mikalo Bandi the applicant.
4. It is the applicant's case that the Administrator of the Estate, one Sarah Musilibi Bandi died on July 28, 2020 and he has attached a Death Certificate to that effect.
5. The Applicant further states that the other beneficiaries have consented to his appointment as the Administrator of the estate. The court was referred to another affidavit on record sworn on June 8, 2022, and which had been filed earlier, to which the consent by the other beneficiaries is attached.
6. The applicant has further stated that one of the beneficiaries, one Joshua Bandi Kimanye has since died and he proposes that the said deceased beneficiary's share of 1.01 acres out of the land parcel Isukha / lubao/210 be allocated to his wife one Emmy Khangayi Lusimba.
7. It is further submitted that the Administrator died before the distribution of the Estate could be effected.

Determination

8. The summons herein is brought under section 76 of the *Law of Succession Act*. The section sets out the grounds upon which a grant of letters of Administration maybe revoked or annulled. One such ground is, if the grant has become useless and inoperative through subsequent circumstances.



9. It is now established, courtesy of many past decisions of the – superior courts, that the Death of an Administrator is one of the “Subsequent circumstances” that make the Grant of letters of Administration useless or inoperative within the Context of the aforesaid section of the *Law of Succession Act*.
10. The Applicant has attached a Death Certificate No. 1020721 showing that the Administrator herein died on July 28, 2020.
11. Also attached to the Affidavit sworn on June 8, 2022 and filed in court on June 23, 2022 is a consent by the other beneficiaries of the estate, giving authority to the applicant to Administer the estate
12. I am find that the Applicant has satisfied the court as to the reason for revocation of the grant and issuance of a fresh one in his name
13. The applicant further prays for the review of the confirmation orders made by this court on February 9, 2022 (Lenaola J). The review sought is in respect of a share of 1.01 acres of the estate property that had been allocated to Jethro Masheti Bandi. The applicant has deponed that Jethro Masheti Bandi has since died and has annexed death certificate No. 0924237, showing that Jethro died on October 28, 2001. I note from the attached Death certificate that the said beneficiary died before the Grant herein was confirmed. The applicant has not explained why the death of the said beneficiary was not brought to the attention of the court at the time of confirmation. I have also noted that there is no proof of marriage between the deceased beneficiary and the proposed substitute, one Emily Khanganyi Lusimba.
14. However, I also take note of the fact that, the existence of the then marriage has not been contested and indeed the rest of the beneficiaries have consented to the substitution of the Administrator through the consent signed on June 8, 2022.
15. In conclusion, I find that the Application is merited and I therefore make the following orders.
 - a. The Grant of Letters of Administration intestate in respect to the Estate of Joshua Bandi Kimanye issued to Sarah Musilibi Bandi is hereby revoked.
 - b. Yosiah Mikalo Bandi is hereby Appointed as the Administrator of the Estate of Joshua Bandi Kumanye and a fresh grant to issue forthwith.
 - c. The said grant is hereby confirmed in the following terms
 - i. Yosiah Mikalo Bandi 1.99 Acres
 - ii. Elikana Mushenye Bandi 1.09 Acres
 - iii. Emmy Khangayi Lusimba 1.01 Acres
 - iv. Rose Lunyangi Kahi 1.18 Acres
 - v. African Divine Church Mutsilio 0.2 Acres
 - d. An amended certificate of confirmation of grant to issue forthwith.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 28TH DAY OF JULY, 2023

S. CHIRCHIR

JUDGE

