



**In re Estate of Ongore Omache (Deceased) (Succession Cause  
260 of 2013) [2023] KEHC 26793 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26793 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
SUCCESSION CAUSE 260 OF 2013  
TA ODERA, J  
DECEMBER 19, 2023**

**IN THE MATTER OF**

**STEPHEN MAUTI ONGORI ..... 1<sup>ST</sup> APPLICANT  
GEORGE OETA MOKUA ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. By a Chamber Summons Application dated 14.2.2023, the Applicant through the firm of Bigogo Onderi & Co. Advocates, seeks the following orders: -
  1. That the Honourable Court be pleased to re-issue the Grant of Letters of Administration Intestate to Stephen Mauti Ongori and George Oeta Mokua in place of Samwel Mokua Ongore.
  2. That costs of this application be in the cause.
2. The grounds on the face of the application were that the remaining beneficiary was unable to administer the Estate hence the need to reissue the Grant of Letters of Administration to Stephen Mauti Ongori and George Oeka Mokua
3. The Application was supported by an Affidavit sworn by Stephen Mauti Ongori on 14.2.2023. He deponed that he had the permission of his co-applicant to swear the Affidavit on his behalf as well. He deponed that the Grant of Letters of Administration Intestate were issued to Samwel Mokua Ongore who had since passed away, as well as his wife. The said Deceased Administrator was the father of the 2<sup>nd</sup> Applicant. He urged the Court to exercise its discretionary powers and reissue him and his nephew, the 2<sup>nd</sup> Applicant, with the Grant of Letters of Administration Intestate.

**Determination**

4. The Application was filed under Rules 49 and 73 of the [Probate and Administration Rules](#).



5. Rule 49 provides as follows: -
  49. Applications not otherwise provided for

A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary by affidavit.
6. Rule 73 provides as follows: -
  73. Saving of inherent powers of court

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.
7. It appears that the Applicants case is pegged on there being no provision for an application similar to theirs- that is where an administrator dies before completing distribution of the Estate. However, this is actually not the case.
8. Ideally, where an administrator dies before completing distribution of an Estate, one may apply for a Grant de Bonis Non, i.e. a limited grant for purposes of completing the distribution of the Estate. See [Re Estate of Goolamboosain Manjee Keshavjee \(Deceased\)](#) [2017] eKLR and [Faith Wanjiku Maganjo v Rebean Muriithi Maganjo](#) [2017] eKLR
9. Rule 16 of the Fifth Schedule of the [Law of Succession Act](#), Cap 160 of the Laws of Kenya provides as follows:
  16. Appointment of person not normally entitled to a grant

Where it appears to the court to be necessary or convenient to appoint some person to administer an estate or any part thereof other than the person who would in ordinary circumstances be entitled to a grant of representation, the court may, in its discretion and having regard to all the circumstances of the case, appoint such other person to be administrator and grant letters of administration, whether limited or otherwise, as it shall think fit.
10. In that case, one may move the Court to revoke the Grant under Section 76(e) of the [Law of Succession Act](#), Cap 160 of the Laws of Kenya since the grant would have become useless and inoperative through subsequent circumstances. One would then apply for a Grant to issue in the names of the relevant person(s) and possibly even apply for confirmation of the grant too. Even then, whoever applies must also conform to the Rules stipulated in the [Law of Succession Act](#) as to who has priority to take out a Grant.
11. However, the present application seeks to have the Grant of Letters of Administration Intestate reissued to the Applicants herein. That, to me, appears to a prayer for substitution. The law is settled on matters substitution of administrators. Grants are issued in personam and cannot be transferred to any other person. In the case of [Re Estate of Mukoro Kimitu \(Dcd\)](#) [2019] eKLR, the Court cited the case of [John Karumwa Maina v Susan Wanjiru Mwangi](#) [2015] eKLR where the Court further cited



the Court of Appeal decision in Florence Okutu Nandwa and Another vs John Atemba Kojwa CACA No. 306 of 1998 at Kisumu. The Court of Appeal held 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 purposes 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.

12. In the same vein, the Applicants herein cannot substitute the deceased Administrator.
13. In addition, the Estate herein was to be shared between Stephen Mauti Ongori and Samwel Mokuia Ongore. George Oeta Mokuia is a son to the Late Samwel Mokuia Ongore. Looking at the Application dated 29.9.2022, Annexure “S.M.O.-2”, I note from the Chief’s Letter dated 12.5.2022, that the Late Samwel Mokuia Ongore has 4 sons. It is not immediately clear why they opted to have one son apply to be an Administrator. Secondly, the said George Oeta Mokuia has not taken out any Grant with respect to his Deceased Father’s Estate. Meaning that his father’s entire portion could easily be divested to him to the exclusion of his brothers.
14. I note that several Applications similar to this one have been filed in this matter in the past. There is a Chamber Summons Application dated 18.5.2022 seeking orders of substitution and the Applicants were guided by Justice R.E. Ougo to file an appropriate application. A similar application dated 4.7.2022 was also filed which application was also dismissed on 29.9.2022. Another application dated 29.9.2022 was also filed. The application was withdrawn on 7.12.2022 and the Applicant’s Counsel was advised by the Court to file its intended application on or before 20.2.2023, hence the present application.
15. Notably, the Application dated 29.9.2022, sought similar orders, i.e. substitution of the deceased Administrator.
16. It follows that the present application will follow the same fate as its predecessor.
17. I believe I have said enough to show that the present Application is untenable.
18. In the circumstances, the Application dated 14.2.2023 lacks merit and I proceed to dismiss the same with no order as to costs.

**DATED, DELIVERED AND SIGNED AT KISII THIS 19<sup>TH</sup> DAY OF DECEMBER 2023.**

**TERESA ODERA**

**JUDGE**

