



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Joseph Kubai Rangata (Deceased) (Succession Cause  
365 of 2015) [2022] KEHC 12600 (KLR) (26 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12600 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
SUCCESSION CAUSE 365 OF 2015**

**LW GITARI, J**

**JULY 26, 2022**

**BETWEEN**

**GYNSON MUCHUNKU MURITHI ..... PETITIONER**

**AND**

**EUNICE IGOJI ..... ADMINISTRATRIX**

**AND**

**MUGENDI JOSEPH ..... PROTESTOR**

**RULING**

1. This cause related to the estate of the Joseph Kubai Marete Rangata who died intestate on January 20, 2010. Gynson Muchunku Murithi and Eunice Igoji are respectively the son and widow of the deceased. Gynson Muchunku Murithi was appointed as the administrator of the estate of the deceased on 5/7/2013 in the Chief Magistrate's court at Chuka Succession Cause No.60/2013. The grant was however revoked by this court on 9/7/2019 and appointed Eunice Igoji the deceased's widow as the administrator
2. Before this court is the Protestor's Notice of Motion application dated 16<sup>th</sup> March 2021 which seeks for the appointment of the Protestor as the administrator of the subject estate in place of the appointed administratrix herein.
3. The application is premised on the grounds on the face of the application, and it is supported by the affidavit sworn by the Protestor on March 16, 2021. The protestor deposes that he is the deceased's son. That during these proceedings, the administratrix was declared senile by doctors and therefore incapable of administering the estate of the deceased effectively. The Protestor thus contends that it is only fair if the application is allowed to ensure that the estate is administered effectively.



4. The application is opposed vide the Replying Affidavit and Further Affidavit both sworn by the Petitioner on July 6, 2021 and December 1, 2021 respectively. He depones that the administratrix is not senile and is well able to administer the estate together with the Petitioner.
5. He further depones that the actions of the Protestor so far regarding the subject estate have been in bad faith. The Petitioner annexed to his further affidavit a medical assessment report contending that the same is a current report which proves that the administratrix is of sound mind. The Petitioner thus prays that the application be dismissed with costs.
6. The application was canvassed by way of written submissions. However the protestor opted not to file submissions.
7. In his written submission which were filed in court on 17<sup>th</sup> January 2022, the Petitioner submitted that the Protestor has not produced any evidence in support of his application and that the proper procedure if his allegations were true was to seek the revocation of grant in its entirety. He relied on the case of *John Karumwa Maina v Susan Wanjiru Mwangi* [2013] eKLR to buttress the position that a grant of representation cannot be transferred from one person to another.
8. The Protestor relied on the grounds on the application and the supporting affidavit.
9. The issue for determination by this court is whether the application dated 16<sup>th</sup> March 2021, which is seeking the substitution of the administratrix, is merited.
10. The Protestor has not indicated under which provisions of the law he has brought his application. The *Law of Succession Act* has no provisions talking about substitution of an administrator. This court earlier expressed itself on the issue of substitution of an administrator by way of filing an application for substitution *In re Estate of Muroko Kimitu - (DCD)* [2019] eKLR as follows:

“There can be no substitution of an Administration 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 grant issued would easily revoked as the proceedings to obtain it were defective in substance.”
11. It is my view that the instant application seeking to substitute the administratrix is not properly before this court. In *John Karumira Maina v Susan Wanjiru Mwangi* (2013) eKLR it was stated, “the issue of substitution of an administrator with another person does not arise.” A grant of representation is made in person. It is specific to the person appointed. It is not transferable to another person.” Section 76 of the *Law of Succession Act* clearly states that where the grant becomes useless and inoperative through subsequent circumstances, the grant may be revoked or annulled either on application by any interested party or by the court of its own motion. The contention by the protestor that the administratrix has become senile tends to bring the grant within the preview of section 76 (*supra*). It is for this reason that I find that the application lacks merits and is dismissed.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 26<sup>TH</sup> DAY OF JULY 2022.**

**L.W GITARI**

**JUDGE**

