



REPUBLIC OF KENYA



**In re Estate of Mukuna Karanu (Deceased) (Succession Cause  
222 of 2007) [2022] KEHC 16751 (KLR) (23 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16751 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 222 OF 2007  
RN NYAKUNDI, J  
DECEMBER 23, 2022  
IN THE MATTER OF  
STEPHEN MWANGI ..... APPLICANT**

**RULING**

1. The applicant herein approached this court vide a summons for revocation of grant dated June 16, 2022 seeking the following orders;
  - a. That the Grant of representation issued to David Karoki Mukuna And Edward Kamau and confirmed on 26th day of May 2008, be revoked on the ground that the grant has become useless and inoperative through subsequent circumstances brought about by the death of one of the Executors, Edward Kamau and the inability of David Karoki Mukuna to perform his functions as Executor due to ill health.
  - b. That a new grant of representation be issued to Stephen Mwangi as the sole Executor of the estate of Mukuna Karanu-deceased.
2. The application is premised on the grounds set out in the joint affidavit of David Karoki Mukuna, Jennifer Wangoi, Damaris Thongori and Stephen Mwangi.
3. The applicant contends that the grant of representation to the estate of the deceased was confirmed to David Karoki Mukuna and Edward Kamau (deceased) as joint executors by this Honourable Court on the 4<sup>th</sup> day of November 2013. Edward Kamau died on 26<sup>th</sup> June 2016.
4. Due to the death of Edward Kamau and the ill health of David Karoki Mukuna, the grant has become inoperative and the beneficiaries are unable to continue with the distribution of the estate. They propose Stephen Mwangi, their brother, to administer the estate on their behalf.

Section 76 of the *Law of Succession Act* provides;



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—
- 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. It is worth noting that, there is no specific provision in succession law which provides for substitution of a single deceased administrator/executor or deceased administrators or executors. In case of such a scenario section 76 (e) comes to play and a fresh grant of letters of administration de bonis non is issued. (see *In re Estate of Ngaigwo M'Shomba (Deceased)*[2019] eKLR).
6. In *Peris Wanjiku Nduati (deceased)* Nairobi High Court Succession Cause No. 2349/2001 J Angawa held that:
- “where an administrator dies before completion of administration, the right course of action should be to seek his replacement through an application for grant of administration de bonis non”. Also see *Maamun bin Rashid bin Salim EL-Rumhy vs Haider Mohammed Bin Rashid El-Basamy* (1963)(EA.438).
7. I have considered the pleadings and the contents therein. Whereas the court notes that the applicant would need to file an application for grant of administration de bonis non to be appointed an administration, it takes into account the age of the matter. Further, the applicant is the right person to apply for a grant of letters of administration de bonis non for purposes of completing the administration of the estate. The beneficiaries entitled to the estate have consented to the appointment of the applicant and therefore there is no requirement for the issuance of notice as provided under rule 26 (2) of the *P & A* rules.
8. Although there are no specific provisions of the law under which the application was filed was quoted, the circumstances and nature of the heading of the application is self-explanatory and under article 159 (2) (d) of *the constitution*, justice shall be dispensed without undue regard to technicalities. I have also taken into account the age of the succession proceedings and it is my view that the distribution of the estate has been pending for far too long.
9. In the circumstances, application herein is allowed and the applicant is appointed the administrator of the estate. Further, the applicant is to provide the court with an inventory of what presently forms the estate and the distribution is to be completed within 60 days of this ruling.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIA EMAIL ELDORET THIS 23<sup>TH</sup> DAY OF DECEMBER, 2022.**



.....

**R. NYAKUNDI**

**JUDGE**

*(mutaioduor@gmail.com)*

