



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO.112 OF 2010

IN THE MATTER OF THE ESTATE OF:

LAWRENT ONGOMA.....DECEASED

BETWEEN

1. JOHN FRANCIS MUYODI

2. PETER LUNANI ONGOMA.....CO-ADMINISTRATORS

AND

1. EDGAR LUNANI MUYODI

2. CYPRIANE ECHESA MUYODI.....APPLICANTS

RULING

1. Edgar Lunani Muyodi and Cypriane Echesa Muyodi, the applicants herein, moved the court by way of Chamber Summons under Rule 73 of Probate and Administration Rules. They are seeking to be substituted for John Francis Muyodi, the deceased co-administrator.

2. The application is premised on the following grounds:

- a) That John Francis Muyodi who died on 15th April 2019 was a co-administrator in this cause that is still pending.
- b) That the applicants have been issued with letters of administration Ad Litem for the deceased's co-administrator's estate.
- c) That it is in the interest of justice and fairness that the orders sought be granted for the expedient disposal of this suit.

3. In the matter of the estate of **Edward Kanyiri Kuniya (Deceased) (2013) eKLR** the court (**Musyoka J**) held that:

Regarding the death of the co-administrator, the position is that the grant...has become inoperative. The grant was made jointly to the applicant and his mother, who has now died. It was intended that the two act together in the administration of the estate. A grant is a certificate. It is issued to a particular person or persons. If the holder of the grant dies the grant becomes useless, as it cannot be transferred to another person. If it was made to two persons and one dies it becomes inoperative. Under section 76 of the Law of Succession Act, such grant is liable to revocation. It should be revoked and another grant made.

4. 13. A similar opinion was expressed in the **Estate of Simon Ngugi Nganga (Deceased) (2013) eKLR**. The court (**Musyoka J**) held:

The matter of the death of a co-administrator cannot be dealt with as a rectification or review of the certificate of confirmation of grant. It is more fundamental. It touches on appointment of administrators. The grant.....was made to two persons. It is expected that the two are to act jointly at all times with respect to the administration of the estate. With the death of one of them, the grant becomes useless as the surviving sole administrator cannot act on the basis of a grant which still bears the name of a dead administrator. Since the grant has become useless and inoperative, it ought to be revoked and fresh appointments of administrators be made. The surviving administrators cannot even use the grant, as it is useless, to seek the orders that the applicant now seeks in this application.

5. These two decisions contradict the provisions of section 81 of the law of Succession Act which provides as follows:

Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.

These two authorities were made *per incuriam* and are therefore not persuasive.

6. In the instant cause, there is no continuing trust. There is, therefore, no need to appoint other administrators in place of John Francis Muyodi.

7. Costs be in the cause.

DELIVERED AND SIGNED AT BUSIA THIS 22ND DAY OF JULY, 2020

KIARIE WAWERU KIARIE

JUDGE