



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

SUCCESSION CAUSE NO. 991 OF 2013

IN THE MATTER OF THE ESTATE OF THE LATE GACHOKI MBARANYU DCD

FAITH WAMUNYU GACHOKI.....PETITIONER

V E R S U S

WARUI KIURA.....1ST PROTESTOR

PAULINE WANDAMA.....2ND PROTESTOR

RULING

1. The petitioner Faith WamunyuGachoki applied for Confirmation of Grant on 20/03/2007 and stated that the deceased was survived by the following children;

- **Faith WamunyuGachoki - widow**
- **NjokaGachoki**
- **WaruiKiura**
- **Pauline Wandama**
- **James Githinji**
- **GitariGachoki**

2. She proposed that the deceased's estate **Mwea/Murinduko/352** be shared as follows;

- **Gitari Gachoki – 4 acres**
- **James Githinji – 4 acres**
- **Faith Wamunyu Gachoki – 3 acres**

3. The protestor WaruiKiurawho claims that the deceased is his father, filed an amended affidavit of protest on 30/08/2012 and proposed distribution of the estate as follows;

- **Faith Wamunyu Gachoki – 2 acres**
- **Warui Kiura – 1 acre**

- **Gitari Gachoki – 4 acres**
- **James Githinji – 4 acres**

4. The protestor Pauline Wandama daughter of the deceased filed an affidavit of protest on 11/11/2013 and proposed distribution of the estate as follows;

- **Gitari Gachoki – 4 acres**
- **James Githinji – 4 acres**
- **Pauline Wandama – 2 acres**
- **Warui Kiura – 1 acre**

5. Unfortunately, the petitioner passed away and on 12/11/2018, the protestor indicated she was desirous of pursuing the matter and sought to be given 30 days to pursue substitution.

6. The issue which arises is substitution of the Administrator/Administratrix.

Substitution

In the case of **John Karumwa Maina v Susan Wanjiru Mwangi [2015] eKLR**.

The Court held while considering the substitution of an Administrator.

The court relied on the decision in FLORENCE OKUTU NANDWA AND ANOTHER –V- JOHN ATEMBA KOJWA, Court of Appeal Civil Appeal in Civil Appeal No. 306 of 1998 at Kisumu where it was held that a court should not issue a grant to a person who has not sought for it. The judge stated 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 purpose 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.”

In a matter before the High Court **Julia Mutune M’mboroki v John Mugambi M’mboroki & 3 others [2016] eKLR**

The Court held;

There is absolutely no room of substitution of the deceased administrator under the Law of Succession Act. In my view, therefore, where the sole administrator is a natural person, and he or she dies, the grant becomes useless or inoperative by reason of subsequent event of his demise.....

Accordingly, in such case, the proper procedure is to apply for revocation of grant of letters of administration under section 76(e) of the Law of Succession Act on the reason that the grant has become useless and inoperative through subsequent circumstances and a grant to be made to another person named in the application.

7. Where the administrator dies before the grant is confirmed, there is no provision for substitution. The petitioner died before the grant was confirmed. There is no room for substitution of the petitioner. The grant has become in-operative due to a subsequent event.

8. In view of the above authorities, the protestor cannot apply for substitution and her only option would be to apply for revocation of grant on the basis of the fact **that the grant has become useless and inoperative through subsequent circumstances**. I find that the protestor cannot substitute the administrator in the same grant. **The Act at Section 76(e) gives the court power to revoke the grant on its own motion where the grant has become useless and in operative through subsequent circumstances. It is therefore in the best interest of the parties that the grant be revoked to enable the parties to have another administrator appointed. Section 76(e) of the Law of Succession Act provides:-**

“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-

(e) that the grant has become useless and inoperative through subsequent circumstances.”

I order that the grant issued to the petitioner Faith Wamuyu Gachoki be revoked.

9. I make no orders as to costs.

Dated at Kerugoya this 29th day of July 2019.

L. W. GITARI

JUDGE