



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
SUCCESSION CAUSE NO. 11 OF 2017
IN THE MATTER OF THE ESTATE OF POPP HANS
JOACHIM ERNST GUSTAV (DECEASED)

BETWEEN

POPP NGULE MARGARET WANGUI (DECEASED).....PETITIONER

STEPHEN MURATHI MUIRURI.....APPLICANT/PROPOSED PETITIONER

AND

JOSEPH KAMAU NYOTA.....OBJECTOR

RULING

[SUMMONS DATED 13TH NOVEMBER, 2017]

1. Hans-Joachim Ernst Gustav Popp passed away in Berlin-Steglitz-Zehlendorf, Germany on 26th January, 2016. I will henceforth refer to him as the Deceased in this ruling. On 30th January, 2017, his wife Popp Ngule Margaret Wangui applied for a grant of letters of administration for his estate. I will henceforth refer to her as the Petitioner.
2. The Applicant herein, Stephen Murathi Muiruri has now disclosed to this court that the Petitioner passed away on 1st April, 2017. Through his summons dated 13th November, 2017, the Applicant seeks, among other prayers, the issuance of a grant to him in respect of the estate of the Deceased and an order amending the Petition filed by the Petitioner.
3. On 21st November, 2017 one Joseph Kamau Nyota filed a chamber summons application which upon perusal appears to be an objection to the summons of the Applicant. I need not go into the details of this particular application as I will first need to address that by the Applicant. For the purpose of this ruling I will nevertheless refer to Joseph Kamau Nyota as the Objector.
4. The first issue to be considered is whether a grant should be issued to the Applicant. Mr. Ghicharu for the Applicant and Mr. Obaga for the Respondent are indeed agreed that where an administrator of the estate of a deceased person dies, a new grant is issued to the person who desires to complete the administration of the estate of that deceased.

5. The law was clearly stated by Khamoni, J in the matter of the estate of **Mwangi Mugwe alias Elieza Ngware (deceased) [2003] eKLR** thus:

“Secondly, the operative word is “substitution”. The Law of Succession Act has no provisions talking about substitution of a deceased single administrator. The Applicant is using section 71 and Rules 40 and 41, the provisions used in normal proceedings during the hearing of summons for confirmation of grant where the administrator has not died. That is not the position in this summons mainly for substitution.

Those provisions, relevant for normal summons for confirmation of grant where the administrator has not died, are not therefore available to an applicant for substitution of a deceased single administrator even if the Applicant wrongly chips in a prayer for confirmation of grant as it has been done through the second prayer in the summons before me.

I do not think Rules 49 and 73 of the Probate and Administration Rules come in to assist the Applicant beyond enabling the Applicant bring this application by way of summons.

In the circumstances therefore, it is my considered view that the proper provisions of the law to apply is section 76(e) of the Law of Succession Act and Rule 44 of the Probate and Administration Rules whereby the Applicant would apply for revocation or annulment of a grant on the ground “that the grant has become useless and inoperative through subsequent circumstances.” The Applicant would proceed to put a prayer in the same application that a new grant be made to him and could as well add a further prayer, if need be, for confirmation of the new grant. The application, should, of course, be supported by consent from adult beneficiaries in the estate of the first deceased person, the second deceased person being the deceased administrator.”

6. Justice W.M. Msyoka has provided a guide as to the way to go where an administrator has died. In **John Karumwa Maina v Susan Wanjiru Mwangi [2013] eKLR**, A.O. Muchelule, J. cites W.M. Msyoka, J as having stated, in a ruling delivered earlier in the same matter, that:

“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 essence, the grant dies with the administrator and a fresh grant has to be obtained in the manner provided by the law governing transmission of properties of deceased persons to their beneficiaries.

7. In the case at hand the Petitioner had in her petition for letters of administration indicated that she was the only person who survived the deceased. The Applicant, and the beneficiaries he has listed, must therefore start the process afresh. It is only after they have placed the relevant information before the court, in the manner provided by the law governing succession causes, can the court decide whether a grant should issue to him. It is noted that in this particular case no grant had issued to the Petitioner. There is therefore no grant to revoke. This matter died with the Petitioner and the appropriate order is to close the file. The Applicant’s application dated 13th November, 2017 is therefore dismissed with no orders as to costs.

Dated, signed and delivered at Malindi this 18th day of January, 2018.

W. KORIR,

JUDGE OF THE HIGH COURT