

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1390 OF 1999

IN THE MATTER OF THE ESTATE OF BRIGITTE GOHIL ALIAS HELGA MELIDA BRIGITTE DABRUNZ (DECEASED)

RULING

1. By a Chamber Summons dated 29th December 2017, the applicants herein Rajendrasinh Ravubha Unadji Gohil, Vijyakunverba Chandrakant Devani and Bhagirath Balubhai Jatubhai Sarvaiya prayed for orders to substitute Mahedrasinh Ravubha Unadji Gohil the sole administrator of the estate herein but now deceased and that after substitution, the grant of letters of administration issued on the 12th October 1999 be confirmed.

2. Application which is filed under Section 47 of the Law of Succession is premised on grounds on the face of it, a joint affidavit deponed on the 29th December 2017 and a further affidavit sworn on the 5th April 2018.

3. The deceased herein died intestate on the 16th October 1997 leaving behind a widower one Mahedrasinh Ravusha Unadji Gohil as the only dependant and beneficiary. Having petitioned for a grant of representation in respect of the deceased's estate on 23rd April 1999, a grant of letters of administration intestate was issued to him on 12th October 1999. Unfortunately, the administrator died on 4th September 2016 before completion of the administration of the estate.

4. Following the death of the administrator, the applicants who are his heirs (survivors), petitioned for a grant of representation vide Succession Cause No. 1826/2016 as administrators and beneficiaries of his estate. A copy of the confirmed grant issued on 6th February 2017 reflecting that they were the sole beneficiaries of the estate of Mahegrasinh Ravusha Unadji Gohil (deceased) was attached. They also annexed a letter from the Chief Highridge Location confirming that they were the only survivors to the estate of the deceased administrator herein.

5. It is on that basis that the applicants are seeking to substitute the deceased administrator so as to complete the administration of the estate. I have carefully considered application herein, supporting affidavit, further affidavit and oral submissions by counsel for the applicant. Rectification of a grant is well captured under Section 74 of the Law of Succession and rule 43(1) of the Probate and Administration rules. Section 47 aforesaid only grants general powers to the High Court to grant any orders it deems expedient in the circumstances but does not deal with rectification.

6. Under Section 74, a court can cause alteration or amendment hence rectification of a grant only if there are errors in names and descriptions or in setting out the time and place of the deceased's death, or the purpose in a limited grant. None of these elements fit in the instant application. The application herein is seeking to substitute a single administrator who died before completion of the estate. Section 47 of the Law of Succession is not the appropriate provision to seek such prayers. Where a single administrator or executor dies, before completion of the estate, the appropriate direction to take is for the applicant to apply for a grant of letters of administration de bonis non. This can only be done by revoking the grant under Section 76 (e) and rule 44 of the Probate and Administration rules and paragraph 16 of the 5th schedule. Technically or legally, the grant has become useless and inoperative. 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.

7. This position was aptly considered in the matter of the estate of **Mwangi Mugwe alias Elieza Ngware (deceased)** and in the matter of the estate of **Mary Wairimu Ngware (deceased) in Nairobi High Court Succession Cause No. 2018 of 2001** where Justice Khamoni dismissed an application seeking substitution of a deceased single administrator without revoking the grant first under Section 76(e). Similar position was held by Judge Angawa in the matter of the estate of **Peris Wanjiku Nduati (deceased) Nairobi High Court Succession Cause No. 2349/2001** in which she 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)**.

8. For the above reasons stated, the application before me and the prayers seeking to directly substitute the deceased administrators under Section 47 of the Law of Succession is not legally and procedurally correct. Although by practice most litigants do not seek a grant of letters of administration de bonis non, the wrong practice should not substitute the correct procedure in law.

9. Accordingly and based on the above finding, application herein is dismissed and the applicant advised to make appropriate application thereby revoking the grant first and then seek issuance of a fresh grant of letters of administration de bonis non and subsequent confirmation of the grant.

Order accordingly.

SIGNED, DATED AND DELIVERED AT NAIROBI ON THIS 17TH DAY OF APRIL, 2018.

J.N. ONYIEGO (JUDGE)

In the presence of:

Mrs. Munene Counsel for the Applicant

Edwin Court Assistant