



6. Section 79 of the Law of Succession Act provides as follows:-

***“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”***

7. Section 82 of the said Act provides for the powers of personal representatives as:-

***“Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—***

***(a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;***

***(b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:***

***Provided that—***

***(i) any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and***

***(ii) no immovable property shall be sold before confirmation of the grant;***

***(a) to assent, at any time after confirmation of the grant, to the vesting of a specific legacy in the legatee thereof;***

***(b) to appropriate, at any time after confirmation of the grant, any of the assets vested in them in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased or any other interest or share in his estate, whether or not the subject of a continuing trust, as to them may seem just and reasonable to them according to the respective rights of the persons interested in the estate of the deceased, and for that purpose to ascertain and fix (with the assistance of a duly qualified valuer, where necessary) the value of the respective assets and liabilities of such estate, and to make any transfer which may be requisite for giving effect to such appropriation:***

***Provided that except so far as otherwise expressly provided by any will—***

***(i) no appropriation shall be made so as to affect adversely any specific legacy;***

***(ii) no appropriation shall be made for the benefit of a person absolutely and beneficially entitled in possession without his consent, nor for the purpose of a continuing trust without the consent of either the trustees thereof (not being the personal representatives themselves) or the person for the time being entitled to the income thereof, unless the person whose consent is so required is a minor or of unsound mind, in which case consent on his behalf by his parent or guardian (if any) or by the manager of his estate (if any) or by the court shall be required.”***

8. I have read closely the provisions of section 50 (1) of the Land Act Cap 280, Laws of Kenya and I am of the considered view that the foregoing provisions read together with those of section 79 of the Law of Succession do not confer any legal interest to an Administrator of a deceased's estate to register the deceased's estate in his name as an Administrator, until after a court has confirmed the grant of letters of administration. It is then that the provisions of section 50 (1) of the Land Act come into effect.

Section 50 of the Land Act (Revised) provides:-

*“(1) If a sole proprietor or a proprietor in common dies, the proprietor’s personal representative shall, on application to the Registrar in the prescribed form and on production to the Registrar of the grant, be entitled to be registered by transmission as proprietor in the place of the deceased with the addition after the representative’s name of the words “as executor of the will of [deceased]” or “as administrator of the estate of [deceased]”, as the case may be. (emphasis added)*

*(2) Upon production of a grant, the Registrar may, without requiring the personal representative to be registered, register by transmission—*

*(a) any transfer by the personal representative; and*

*(b) any surrender of a lease or discharge of a charge by the personal representative.*

*(3) In this section, “grant” means the grant of probate of the will, the grant of letters of administration of the estate or the grant of summary administration of the estate in favour of or issued by the Public Trustee, as the case may be, of the deceased proprietor.”*

Section 51 of the Land Act provides:-

*“(1) Subject to any restriction on a person’s power of disposing of any land, lease or charge contained in an appointment, the personal representative or the person beneficially entitled on the death of the deceased proprietor, as the case may be, shall hold the land, lease or charge subject to any liabilities, rights or interests that are unregistered but are nevertheless enforceable and subject to which the deceased proprietor held the same, but for the purpose of any dealing the person shall be deemed to have been registered as proprietor thereof with all the rights conferred by this Act on a proprietor who has acquired land, a lease or a charge, as the case may be, for valuable consideration.*

*(2) The registration of any person as aforesaid shall relate back to and take effect from the date of the death of the proprietor.”*

9. Under the provisions of section 2 of the Land Act, the word “**transmission**” is defined as the passing of land, a lease or a charge from one person to another by operation of the law on death or insolvency or otherwise howsoever, and includes the compulsory acquisition of land under any written law.

10. The purpose of having the deceased’s assets registered in the Administrator’s name after confirmation of the grant is for purposes of executing his duties under the provisions of section 83 of the Law of Succession Act. One of the said duties relates to the distribution of the deceased’s estate to the beneficiaries.

11. In the case of **Beatrice Wangui Kamau alias Beatrice Wangui Kagunda vs. John Kariuki Kamau & Another [2016] eKLR**, Justice Ombwayo held that it is upon issuance of the grant and confirmation of the same that the Land Act, No. 6 of 2012 comes into place. I hold a similar view.

12. The search certificate that is on record shows that the name of the proprietor of LR. No. Kakamega/Virembe/342 is one Luka Mutsami Samwel – Administrator. That being the case, and the said land not being in the name of the deceased Sarah Chitambe, it is my finding that there is no estate available from the deceased for distribution.

13. It is apparent that the Petitioner/Administrator moved prematurely with speed to effect the provisions of section 50 (1) of the Land Act before the confirmation of grant of the letters of administration.

14. I therefore decline to confirm the grant until such time that the Administrator will ensure that the proprietorship of LR. No. Kakamega/Virembe/342 has reverted in the name of the deceased, Sarah Chitambe. As of now, there is no estate available for distribution.

The Petitioner/Administrator has the right to appeal within 30 days.

It is so ordered.

**DELIVERED, DATED and SIGNED** in open court at **KAKAMEGA** on this .....**18<sup>TH</sup>** ..... day of .....**MAY**,....., 2016.

**NJOKI MWANGI.**

**JUDGE.**

**In the presence of:-**

..... **for the Petitioner/Administrator.**

..... **Court Assistant.**