

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 41 OF 2013

(IN THE MATTER OF THE ESTATE OF SIMEON KARECHU KIRIRA ALIAS SIMEON KARECHO KIRIRA, KARECHU S/O KIRIRA & KARECHO S/O KIRIRA (DECEASED))

SAMUEL NGURE KARECHU.....APPLICANT

RULING

This ruling is on an uncontested application dated 20th January, 2015 brought under **Rule 49** of the **Probate & Administration Rules**. The applicant seeks to have the grant of letters of administration intestate made to one **David Muthumbi Karechu** on 13th May, 2013 in respect of the estate of **Simeon Karecho Kirira** (deceased) “set aside” and in his place the applicant be appointed as the administrator of the deceased’s estate.

The basis of the applicant’s application is that the administrator to whom the grant was initially made died on 21st September, 2013; a copy of the certificate of his death has been exhibited to the applicant’s affidavit sworn in support of the summons. I understand the applicant’s case to be that with the demise of the administrator, the letters of administration granted to him have become useless and inoperative.

Filed together with the summons is a consent duly executed by the rest of the persons who are entitled to a share of the deceased’s estate and who would otherwise be entitled to petition for the grant of letters of administration themselves.

Under **section 76 (e)** of the **Law of Succession Act** a grant may be annulled or revoked on the ground that it has become useless and inoperative through subsequent circumstances. The demise of an administrator or administratrix is without doubt one of the subsequent circumstances that would render a grant useless or inoperative. **Section 51 (1) and (2)(d), section 76(d)** of the **Act** together with rule **26(3)** of the Probate and Administration rules presuppose that the grant can only be made and a deceased’s estate can only be administered by a living person. Where the administrator or the administratrix dies before the estate is distributed the grant to him or her serves no purpose.

I am satisfied that for the reasons given, the applicant’s summons dated 10th July 2014 is merited and it is hereby allowed; I therefore order that the grant made to David Muthumbi Karechu on 13th May, 2013 be and is hereby revoked and that **Samuel Ngure Karechu** is hereby appointed as the administrator of the estate of the late Simeon Karecho Kirira.

Dated, signed and delivered in open court this 31st July, 2015

Ngaah Jairus

JUDGE