



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 2018 OF 2001**

IN THE MATTER OF THE ESTATE OF MWANGI MUGWE alias ELIEZA NGWARE  
(DECEASED)

AND

SUCCESSION CAUSE NO. 2019 OF 2001 IN THE MATTER OF THE ESTATE OF MARY  
WAIRIMU

NGWARE

AND

SUMMONS FOR SUBSTITUTION OF AN ADMINISTRATOR AND  
CONFIRMATION OF GRANT

AND

ROBINSON MWANGI NGWARE ..... APPLICANT

Issue:

Whether there are provisions in the  
Law of Succession Act (Cap.160)  
for Substitution of a deceased single  
administrator.

R U L I N G

In this summons dated 22nd November 2002 for substitution of An Administrator And Confirmation of Grant, the Applicant, Robinson MwangiNgware, is in the first prayer asking the court to have him substituted as the administrator of the estate of Mwangi Mugwe alias Elieza Ngware whose name is also written in paragraph 3 of the Applicant's supporting affidavit dated 22nd November 2002 as Mwangi Mugwe Aka Elieza Ngware. The administrator the Applicant wishes to replace is Fredrick Kamau Ngware the Applicant says died on 25th July 2002 after the grant in this estate had been issued to him on 31st January 2002 and before that grant was confirmed. The Applicant, Robinson Mwangi Ngware, is a younger brother of Fredrick Kamau Ngware and one of the beneficiaries in the estate of their deceased father Mwangi Mugwe.

Although the other surviving beneficiaries have filed what I have been told is their consent to this

application, my closer scrutiny of the whole application reveals the following short comings:

Firstly, the aforesaid consent is not valid because in so far as it supports the confirmation of grant, the consent does support the confirmation of the grant

“made to FREDRICK KAMAU NGWARE”

the very person I have been told is now deceased. To that extent only, that consent is sufficiently useless.

But the said consent goes further to cause confusion by stating that the three beneficiaries, the signatories

“further CONSENT THAT ROBINSON MWANGI NGWARE BE SUBSTITUTED WITH FREDRICK KAMAU NGWARE AS ADMINISTRATOR”.

That raises a question as to who is to be substituted by who in the Applicant’s application before me?

That statement does not agree with the statement in the First prayer in the summons which says that it is Fredrick Kamau Ngware to be substituted with Robinson Mwangi Ngware and the two statements do not therefore mean the same thing as they should do. That is a fatal defect.

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 this 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.

Before I conclude this summons dated 22nd November 2002 respecting the estate of Mwangi Mugwe, I should add it is apparent that Mwangi Mugwe had other names a part from the name Mwangi Mugwe. Reading the summons herein together with its supporting affidavit, it is apparent that the name should be MWANGI MUGWE alias ELIEZA NGWARE. I may be wrong. But if I am right, the Applicant better take a note of that with a view to having an additional prayer in his application to have the new grant include all these names of the deceased to avoid problems the Applicant may run into when using the new grant to administer the estate.

From what I have been saying above therefore, I find this summons dated 22nd November 2002 respecting the deceased Mwangi Mugwe improper and incompetent. The same is hereby dismissed with liberty to the Applicant to file a proper one.

What I have so far said in this ruling will apply, mutatis mutandis, to the summons dated 22nd November 2002 in this court's Succession Cause No. 2019 of 2001, which said summons I hereby similarly dismiss and will not therefore write a separate ruling respecting that Succession Cause but will have a copy of this ruling filed in relevant case file.

The Deceased in Succession Cause No. 2019 of 2001 is Mary Wairimu Ngware wife of Mwangi Mugwe. The two died on different dates and Fredrick Kamau Ngware subsequently became the administrator of the estate of each one of them.

In the estate of their mother Mary Wairimu Ngware therefore, the Applicant Robinson Mwangi Ngware is similarly applying for substitution. His summons also dated 22nd November 2002 is supported by an affidavit similar to the one in support of the application in the other cause to which are attached similar annexures except that certificates of death are different. The grant in this estate had also been made to the deceased administrator on 31st January 2002 before the deceased administrator died on 25th July 2002.

During the hearing of the application herein M/s Thuku & Company, Advocates, who had first prosecuted the Applicant's application in Succession Cause No. 2018 of 2001, told the court they were relying on their submissions made in Succession Cause No. 2018 of 2001 and wished to associate the same with the brief submissions in Succession Cause No. 2019 of 2001 and leave the two cases to the court to make a ruling. It is in the same spirit that I have decided to write a joint ruling, the legal issues in Succession Cause No. 2019 of 2001 being same as the legal issues in Succession Cause No. 2018 of 2001.

Dated this 21st Day of January 2003.

**J.M. KHAMONI**

**JUDGE**