



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Charles Mwaniki Kamara (Deceased) (Probate & Administration
533 of 2012) [2025] KEHC 3095 (KLR) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3095 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PROBATE & ADMINISTRATION 533 OF 2012
MA ODERO, J
MARCH 17, 2025**

BETWEEN

FRANCIS KIBE MWANIKI APPLICANT

AND

RAHAB WANJIRU KAMARA 1ST RESPONDENT

NELSON KAMARA MWANIKI 2ND RESPONDENT

ROSE MUTHONI KAMARA 3RD RESPONDENT

RULING

1. Before this Court for determination is the Summons for revocation of Grant dated 25th June 2024, by which the Applicant Francis Kibe seeks the following orders:-
 - “ 1. That the Letters of Administration issued to Mary Wangechi Kamara, Nelson Kamara Mwaniki, Rahab Wanjiku Kamara and Rose Muthoni Kamara on 22nd January 2020 be revoked.
 2. That a fresh Grant of letters of Administration be issued in the names of Francis Kibe Mwaniki, Nelson Kamara Mwaniki, Rahab Wanjiku Kamara and Rose Muthoni Kamara.
 3. That this Honourable Court be pleased to grant any other or further order it may deem fit and expedient in the circumstances.
 4. That the costs of this application be costs in the cause.”
2. The Summons was premised upon Section 76 of the *Law of Succession Act*, CAP 160 and Rules 44(1), 49, 59 and 73 of the Probate and Administration Rules and all other enabling provisions of the law and was supported by the Affidavit of even date sworn by the Applicant.



3. The Administrators filed Grounds of opposition dated 10th July 2024. Rahab Wanjiku and Rose Muthoni Kamara both joint Administrators of the estate filed Replying Affidavits dated 9th July 2024 and 10th July 2024 opposing the Summons.
4. The Summons was canvassed by way of written submissions. The Applicant did not file any submissions. The 2nd Respondent filed the written submissions dated 12th February 2025 whilst the 1st and 2nd Respondents filed written submissions dated 16th December 2024.

Background

5. This Succession cause relates to the estate of the late Charles Mwaniki Kamara (hereinafter 'the Deceased') who died on 18th November 2011. A copy of the Death Certificate Serial No. 132536 is in the court file. The Deceased was a polygamous man and was survived by the following persons;-

1st House

- a. Rahab Wanjiku Mwaniki - Daughter - Adult
- b. Nelson Kamara Mwaniki - Son - Adult
- c. Stanley Wangenye Mwaniki - Son - Adult
- d. Damaris Wangui Mwaniki - Daughter - Adult
- e. Martha Gakenia Mwaniki - Daughter - Adult

2nd House

- a. Mary Wangechi Kamara - Wife
 - b. Diana Wachuka Mwaniki - Daughter - Adult
 - c. Rose Muthoni Mwaniki - Daughter - Adult
 - d. Family of Jackson Kamara Mwaniki - Son - Deceased
 - e. Family of Richard Wanjau Mwaniki - Son - Deceased
 - f. Paul Njeru Mwaniki - Son - Adult
 - g. Julius Nyaga Mwaniki - Son - Adult
 - h. Francis Kibe Mwaniki - Son - Adult
 - i. Family of Daniel Ngeche Mwaniki - Son - Deceased
 - j. Samuel Ndegwa Mwaniki - Son - Adult
6. Following the demise of the Deceased Grant of Letters of Administration Intestate in respect of his estate were on 22nd January 2020 issued jointly to Mary Wangechi Kamara, Nelson Kamara Mwaniki, Rahab Wanjiku Kamara and Rose Muthoni Kamara. A copy of the said letters of Administration are annexed to the Supporting Affidavit dated 25th June 2024 (Exhibit 1).
 7. Unfortunately one of the joint Administrators of the estate Mary Wangechi Kamara (who was also the 2nd wife of the Deceased) passed away on 9th June 2023 before distribution of the estate had been finalized. A copy of her death certificate appears as Exhibit 2 to the Supporting Affidavit.



8. The Applicant avers that the death of the administrator has rendered the entire Grant useless and inoperative. He prays that the Grant issued on 22nd January 2020 be revoked and a fresh grant be issued in the names of himself and the three surviving administrators.
9. The Respondents oppose the summons for revocation of Grant. They argue that the death of one administrator does not render the entire grant useless and inoperative. They further submit that the Applicant has not obtained the consent of the other children of the 2nd House to be appointed as administrator in place of his late mother.

Analysis And Determination

10. I have carefully considered the application before this court, the replies filed thereto as well as the written submissions on record.
11. The grounds upon which a Grant of representation may be revoked are set out in Section 76 of the *Law of Succession Act*, Cap 160 Laws of Kenya. Section 76(e) of the *Law of Succession Act* provides that a Grant may be revoked on grounds

“ that the grant has become useless and inoperative through subsequent circumstances”
12. It is common ground that the Grant in this matter was issued jointly to four (4) persons. It is also not dispute that one of those joint administrators Mary Wangechi Kamara passed away in June 2023.
13. The Applicant submits that the death of one out of four (4) administrators has rendered the Grant “useless and inoperative”.
14. This is not the correct position in law. The death of one out of two or more joint administrators does not render a grant useless and inoperative. The surviving administrators have the legal mandate to continue with the administration and distribution of the estate.
15. Section 81 of the *Law of Succession Act* Cap 160 provides as follows;-

“ 81 Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them.....” [Own emphasis]
16. In Re Estate Of Elijah Oktah Milkah Tsim Bwele(Deceased [2021] eKLR, Hon. Justice William Musyoka stated as follows;-

“The death of one or more administrators does not affect the grant in terms of rendering it invalid or inoperative or useless. Under Section 81 of the Act, the powers and duties of personal representative vest in the surviving personal representative on the death of one of them.” [own emphasis]
17. In this case one out of four joint administrators has died. The Grant remains valid and effective. The powers and duties of personal representative will now vest, the remaining three (3) administrators who legally can proceed with the administration of the estate.
18. Having so stated I note that this is a case in which the Deceased was a polygamous man who left behind two (2) Houses. The first house was two (2) representatives in the administration of the estate being Rahab Wanjiku Mwaniki and Nelson Kamara Mwaniki.



19. Following the demise of Mary Wangechi Kamara, the 2nd House is left with only one (1) representative in the administration of the estate namely Rose Muthoni Kamara. In order to ensure equity in representation it would be desirable that the members of the 2nd House nominate another person to replace their late mother as Administrator.
20. Section 47 of the *Law of Succession Act* provides as follows:-
- “The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”
21. Likewise Rule 73 of the Probate and Administration Rules provide that
- “73, Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
22. Based on the powers granted to the court and in view of the need to ensure equitable representation in the administration of the estate this Court makes the following orders:-
- (1) The Grant of letters of Administration intestate issued to Mary Wangechi Kamara, Nelson Kamara Mwaniki, Rahab Wanjiku Kamara and Rose Muthoni Kamara on 22nd January 2020 be and is hereby revoked.
- (2) The 2nd House to decide on one (1) person to be appointed as Administrator in place of the late Mary Wangechi Kamara.
- (3) Mention within fourteen (14) days to receive the name of the new Administrator.
- (4) This being a family matter, the court will make no orders on costs.

DATED IN NYERI THIS 17TH DAY OF MARCH 2025.

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MAUREEN A. ODERO

JUDGE

