



**In re Estate of Njoroge Njau (Deceased) (Succession Cause
E158 of 2020) [2025] KEHC 5406 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5406 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE E158 OF 2020**

DO CHEPKWONY, J

APRIL 24, 2025

IN THE MATTER OS THE ESTATE OF NJOROGE NJAU (DECEASED)

BETWEEN

PAUL NJOROGE BORO 1ST CITOR

JOHN NJOROGE NJAU 2ND CITOR

HOSEA MUCEKE CIIRA 3RD CITOR

AND

TERESIAH WATHITHI NJAU CITEE

RULING

1. The Citors filed the Citation dated 31st January, 2025 seeking the Citee Teresian Wathithi Njau to Accept or Refuse Letters of Administration Intestate in respect of the Estate of Njoroge Njau, (the deceased).
2. It is supported by the Affidavit of the three Citors, Paul Njoroge Boro, John Njoroge Njau and Hosea Muceke Ciira, sworn on 16th December, 2024 who are the grandsons and nephew of the Deceased respectively and held that they too are entitled to a share in his Estate having survived their parents were direct beneficiaries of the Estate. The Citation is supported by grounds set out in the Verifying Affidavit sworn by the three Citors.
3. It is their case that the deceased was polygamous and had three families surviving him when he died on 20th December, 2017. That they are entitled to apply and obtain Grant of Letters of Administration of the Estate, the fourteen (14) beneficiaries herein having consented to this but since the Citee who is entitled to apply for the same has refused to sign the consent or to cooperate with the other family members it would be in the interest of justice that they be allowed to petition for the same without the



- Citee's consent. That the Citee has not given any reason for her refusal to sign the Consent or why she cannot co-operate with other family members in petitioning for grant of representation.
4. The Citation is opposed through the Replying Affidavit of Teresiah Wathithi Njau sworn on 1st April, 2025 in her capacity of a daughter in law of the deceased and on behalf of her deceased husband. According to the Citee, her husband, Samuel Njau Njoroge was the Administrator of the Estate of Njoroge Njau pursuant to a Certificate of Grant issued on 11th July, 1997 and that the succession cause was concluded and all the beneficiaries agreed to the mode of distribution. She holds that her husband died in the year 2006 before he could completely administer the estate. She holds that she is not aware of any petition of grant of letters of administration of the estate as her family was not involved in the process. She holds that the High Court Succession Cause No.2281 of 1995 was concluded and the estate distributed, so that the only pending issue is the subdivision and transmission of Land Parcel No Ndumberi/Ndumberi/980 to the rightful beneficiaries and as such she has never been an obstacle to the administration of the estate as alleged.
 5. When the matter came up in court on 7th April, 2025. The Citors' Counsel, Mr. Njuguna pointed out that the Citee had annexed a Certificate of Confirmation of Grant in respect of the same Estate and in which grant the Citor's husband was appointed as the Administrator in 1995 but is now deceased. That he died before distributing the Estate. According to Citors' counsel, the grant cannot be used to administer the Estate since Grant of Letters of Administration is issued in personam so that when an Administrator dies like in this case, such grant is no longer operational in law and thus cannot be relied upon.
 6. Counsel then urged that since the Estate was never distributed and most of the beneficiaries are now deceased, he would make an application in the same cause that issued the Grant for its revocation since it was useless and inoperative.
 7. The Citee's Counsel, Mr. Gichuhi, indicated that there was already an existing Succession Cause being Milimani High Court Succession Cause No 2281 of 1995 when the Certificate of Grant was issued in 1997 and did not dispute that it was inoperative. He holds that the Citors ought to have used the right procedure under Section 76 (e) of the *Law of Succession Act* and proceed to take out Limited Grant de Bonis Non since the estate was partially distributed.
 8. This assertion was opposed by counsel for the Citors on the ground that the land in question has remained undistributed for the last thirty (30) years when the Grant was issued and Grant de Bonis Non cannot apply in such circumstances. He also added that most of the beneficiaries listed in that Grant are deceased and the Citors are their children.
 9. It is trite that a Grant of representation acts in personam and cannot be transferred to another person. Where an Administrator appointed in a Grant dies before administering the Estate of the deceased, the only remedy available is revocation of the Grant since the same becomes useless and inoperative in law pursuant to Section 76 (e) of the *Law of Succession Act*.
 10. This Court also places reliance in the case of *Re Estate of Mwangi Mugwe alias Elieza Ngware (deceased)* [2003] eKLR, where Hon. Khamoni, J. had this to say in similar circumstances, and which holding I subscribe to:-

“...the operative word is “substitution”. The *Law of Succession Act* has no provisions talking about substitution of a deceased single administrator...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.

11. Also, in the case of *Florence Okutu Nandwa & another v John Atemba Kojwa*, Kisumu Civil Appeal No 306 of 1998, the Court of Appeal made it clear that:

A grant of representation is made in personam. It is specific to the person appointed. It is not transferable to another person. It cannot therefore be transferred from one person to another. The issue of substitution of an administrator with another person should not arise. Where the holder of a grant dies, the grant made to him becomes useless and inoperative, and the grant exists for the purpose only of being revoked. Such grant is revocable under section 76 of the *Law of Succession Act*. Upon its revocation, a fresh application for grant should be made in the usual way, following procedures laid down in the *Law of Succession Act* and the Probate and Administration (Rules)...”

12. Therefore, it is this Court’s finding that the proper procedure to be followed by the Citors for revocation of Grant of the Estate of Njoroge Njau would be to seek for issuance of a fresh Grant. In the circumstances, this Court cannot grant the orders sought in the citation and proceeds to strike the same with no orders as to costs. The parties are directed to move the court appropriately.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 24TH DAY OF APRIL , 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Njuguna counsel for Citors

M/S Gichuhi holding brief for Mr. Mburu counsel for Citee

Court Assistant - Martin

