



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Watatua Kibere (Deceased) (Succession Cause
1348 of 1999) [2025] KEHC 5757 (KLR) (Family) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5757 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

SUCCESSION CAUSE 1348 OF 1999

PM NYAUNDI, J

MAY 9, 2025

IN THE MATTER OF WATATUA KIBERE (DECEASED)

RULING

1. Vide Notice of Motion application dated 12th October 2024, the Applicant seeks the following orders;
 1. Spent
 2. That this Honourable Court be pleased to set aside the proceedings, ruling and consequential orders made by the learned Hon. Lady justice P. Nyaundi SC on 11th October 2024 closing the file terminating and terming the summons for the revocation of grant as waste of time.
 3. That this Honourable Court be pleased to and hereby order that there be a maintenance of the status quo of the applicants place of residence herein pending the hearing and final determination of this application.
 4. That this Honourable Court be pleased to grant the right to be substituted as a beneficiary of the estate of Watatua Kibere (Deceased) to prosecute the summons for revocation of grant dated 28th January 2022 on behalf of her (sic) deceased mother.
 5. That the costs of this application be provided for.
2. The Application is supported by the annexed affidavit of Bernard Thairu Gathama sworn on 12th October 2024. The Applicant is aggrieved by the ruling of this court delivered on 11th October 2024 and seeks its review on the ground that it was erroneous and failed to capture or reflect the true position of the suit and applications filed so far.
3. The Applicant states that the Court erred in disposing of the summons for revocation when what was before the Court for consideration was an application dated 15th April 2024 to allow him substitute his deceased mother as the applicant in the matter.



4. It is further stated that the Court erred in finding that he had withdrawn his application when this was not the position.
5. The Respondent has filed an affidavit in opposition sworn on 11th July 2024.

Analysis and Determination

6. The Applicant herein is seeking to restore an application for substitution for hearing so that he can prosecute a summons for revocation of grant. In dismissing the application earlier I indicated that it would be a waste of judicial time to prosecute that application.
7. The Applicant urges that he has a constitutional right to be heard, that may be so, but that right is hinged on the requirement that what he presents is a competent application that justifies the expending of judicial mind and time, which as stated in my earlier ruling is scarce.
8. I am not persuaded that the application as presented by the Applicant falls within the ambit of Order 45 rule 1,2 and 3 of the Civil procedure Rules. In my ruling I was of the view that the summons was an abuse of court process. That cannot be reviewed, the applicant if aggrieved ought to appeal. The fact however is that both administrators having died, the grant stands revoked pursuant to Section 76 of the Law of Succession Act. There is no grant for the Applicant to seek revocation of as both administrators are dead.
9. Even if I were to reinstate his application to substitute the deceased administrator so as to enable him pursue the application for revocation, it would be an exercise in futility, both administrators are dead. The grant is inoperative.
10. The Application is accordingly dismissed each party to bear their own costs.

SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 9TH DAY OF MAY, 2025.

P M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Gikunju holding brief for Ms. Mureithi for Respondent

Fardosa Court Assistant

