



REPUBLIC OF KENYA



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

In re Estate of Naja Jehangir Austin (Deceased) (Succession Cause 107 of 1982) [2025] KEHC 9157 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9157 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 107 OF 1982**

G MUTAI, J

JUNE 19, 2025

IN THE MATTER OF THE ESTATE OF NAJA JEHANGIR AUSTIN (DECEASED)

BETWEEN

NAVROZE MARZBAN AUSTIN PETITIONER

AND

SAMUEL KARISA MASHA AKA SAMUEL KARISA AUSTIN OBJECTOR

RULING

1. The deceased whose estate is the subject of this estate is Naja Jehangir Austin, nee Mistry. She died in London on 25th August 1972 from cellulitis, peripheral atheromatous vascular disease, diabetes mellitus, and hypothyroidism.
2. A petition for the grant of letters of administration intestate was filed by Erach Jehangir Austin on 17th August 1981. It appears to me from reviewing the Court record that a grant of representation was never issued in this matter to the said applicant. On 4th October 2018, the counsel for the Petitioner, Kamoti Omollo & Co. Advocates, filed a Notice of withdrawal of the application for grant. The basis for doing so was that Erach Jehangir Austin had subsequently died after the filing of the grant.
3. *Vide* a petition for letters of administration intestate dated 4th October 2018, Marzban Jehangir Austin (“Marzban”) petitioned for a grant of representation on the ground that the deceased died intestate while domiciled in Kenya. He identified himself and Erach Jehangir Austin as the heirs of the deceased. Marzban identified the estate of the deceased as a 1/3 undivided share in Title No. Mombasa/Block XXI/129, whose estimated value was given as Kes.5,000,000.00.
4. Being satisfied that the petition was in order, this Court issued a grant of representation to the said Marzban Jehangir Austin of 5 Green Hedge Lane, London, Ontario, Canada, NGH-423.



5. According to the Court record, the grant was never confirmed, as Marzban Jehangir Austin passed away on 22nd January 2021, in London, Ontario, Canada.
6. Following the death of Marzban Jehangir Austin, the petitioner herein, filed a petition for the grant de bonis non administratis on the estate of Naja Jehangir Austin. The petitioner, Navroze Marzban Austin, identified himself as the son of Marzban Jehangir Austin (deceased) and the grandson of Naja Jehangir Austin (deceased).
7. Navroze identified the beneficiaries of the grandmother's estate as being his father, Marzban, and Erach Jehangir Austin (also deceased). He listed the sole asset of the deceased as a 1/3 undivided share in Title No. Mombasa/Block XXI/129, whose total estimated value he gave as Kes.5,000,000.00.
8. The objector, Samuel Karisa Masha, also known as Samuel Karisa Austin, filed summons for the revocation of the grant issued to Marzban Jehangir Austin on 21st October 2022 on the grounds, inter alia, that the grant was issued pursuant to proceedings that were and remain defective in substance and principle. He averred that the same was obtained fraudulently upon the making of false statements and or concealment of material facts. Mr Masha averred that the grant was also obtained using untrue allegations of a plethora of facts essential in point of law to justify the grant.
9. The objector abandoned the summons for revocation of the grant once he became aware of the fact that the petitioner had applied for the grant de bonis non administratis. He thereafter filed an objection to the making of a grant to Navroze Marzban Austin, dated 9th February 2023, on the ground that he was the foster son of Erach Jehangir Austin, the son of the deceased. He averred that there were proceedings in respect of the estate of Erach Jehangir Austin, which had not been disclosed by the petitioner, which rendered these proceedings defective in substance and fraudulent.
10. The matter was heard by way of *viva voce* evidence on 15th July and 17th December 2024.
11. In his testimony, Navroze stated that he was the son of Marzban. Marzban and Erach were the children of the deceased Naja. Both Marzban and Erach are now deceased. He testified that he was not the only grandson of the deceased. He identified the sole property of the deceased as being a 1/3 share of Title No Mombasa/Block XXI/129, with the other shares being owned 1/3 by Marzban and 1/3 by Erach. She gave her grandmother's share of the property as being worth Kes 5,000,000.00. He did not, however, present a valuation report.
12. Navroze averred that he was seeking a grant for the benefits of both estates.
13. Samuel Karisa Austin testified on 17th December 2024. He is a resident of Ganjoni and works as a driver at Kenya Petroleum Refineries. He testified that Erach Jehangir Austin was his father.
14. Mr. Karisa testified that at the time when Naja died in 1972, he had not been born as he was born on 9th February 1993. It was his evidence that he was adopted by Erach Jehangir Austin and was fostered by Erach and his wife, Beatrice Changawa Masha. He testified that for that reason, he was the son of Erach and Beatrice Changawa Masha. He stated that he was objecting to the grant on the ground that he was not involved in the application for the grant de bonis non administratis, despite being a beneficiary of the estates of Naja and Erach.
15. Upon the conclusion of the hearing, the Court directed the parties to file written submissions. The petitioner filed written submissions dated 24th March 2025. The objector does not appear to have filed his submissions in the eFiling/CTS platform. Despite my best efforts, I have not seen copies of the same.
16. In the petitioner's submissions dated 24th March 2025, the petitioner urged that the application be allowed on the ground that the estate could not remain unadministered forever. This Court was



requested to consider the persuasive authority of the case of In *re Estate of Goolamboosain Manjee Keshavjee (Deceased)* [2017] KEHC 1395 (KLR) in which the learned judge stated that the estate of a deceased person cannot be left administered forever and proceed to issue a grant de bonis non with will annexed.

17. I have considered the matter, the objection filed herein, the documents filed by the parties, as well as the written submissions. I have also considered the law as expounded by the courts of Kenya.
18. I note that the deceased died in 1972. That is 53 years ago. The effluxion of time notwithstanding, her estate has not been fully administered.
19. The petitioner and the objector agree that the deceased had two heirs, Erach and Marzban, both of whom are deceased. The status of Navroze as a beneficiary of Marzban's estate is not in contention. It is a fact admitted that he is the son of Marzban. In his petition de bonis non administratis, Navroze has identified the two beneficiaries of the estate.
20. As the deceased grandchild, and nothing that his father is deceased, the petitioner is a proper person to take out the grant in this case under section 66 of the *Law of Succession Act*. I am guided by the decision of the court in the case of *In the Matter of the estate of Veronica Njoki Wakagoto (Deceased)* [2013] KEHC 1930 (KLR) where it was held by W Musyoka, J as follows: -

“Under Part V, grandchildren have not right to inherit their grandparents who die intestate after 1st July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.” (emphasis added).

21. The status of the objector is under contestation. Whether or not he may be considered the child of Erach Jehangir Austin is something that will have to be established in subsequent proceedings. I, therefore, am unable to issue a grant to him until his status is ascertained.
22. Although the petitioner ought to have filed a summons for revocation for grant issued on 2020 on the ground that it had become useless and inoperative on the account of the death of Marzban Jehangir Austin, I am of the opinion that the failure to do so is curable procedural lapse which I can overlook pursuant to Article 159(2) of the *Constitution* and in exercise of my powers under section 47 of the *Law of Succession Act* and Rule 73 of the *Probate and Administration Rules*. Procedure is, where it does not cause a miscarriage of justice, and as has often been said, is the handmaiden of substance, not her mistress.
23. I am guided by the persuasive authority of the case of *In re Estate of ZKM Deceased* [2018] KEHC 9738 (KLR), where Ali-Aroni, J, as she then was, stated as follows: -

“20. Ordinarily, I would align myself with the decisions that require that where a sole administrator dies there is need to file an application for revocation and for grant de bonis non.

However as always, each case has to be decided on its on merit. I am of the considered opinion that justice in this case will not be achieved if the court were to insist on such an application to be filed. In this instance to insist for



another application for 'grant de bonin non' 'be filed would be to elevate mere procedure and technicalities at the expense of just and fair administration of justice.

The Kenyan Constitution in, Article 159 (2)(b)(d) states:

- “(2) in exercising judicial authority, the court and tribunals shall be guided by the following principles;
- a. Justice shall not be delayed
- (d) Justice shall be administered without undue regard to procedural technicalities; and ...”

Rule 73 of the Probate and Administration rules provide that nothing in the 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.

In an Indian case where the executor had died having applied for probate but before confirmation Shambu Prasad Agarwal & ors vs Bhola Ram Agarwal (2000) 9 SCC 714 the Supreme Court while agreeing that a sole executor cannot be substituted and it cannot be disputed that heirs ought to petition for grant of administration and having regard to the time that had lapsed, held that the interest of justice would require that the proceedings should come to an end as early as possible and the appeal should not be rejected on what was regarded as being a 'highly technical ground'.”

24. A similar holding was made in the case of In re Estate of Goolamboosain Manjee Keshavjee (Deceased) [2017] KEHC 1395 (KLR), Onyiego, J held as follows: -

- “14. Although no specific provisions of the law under which the application was filed was quoted, the circumstances and nature of the heading of the application is self-explanatory and under Article 159 (2) (d) of the constitution, justice shall be dispensed without undue regard to technicalities...”



25. It is a well-established principle of law that this Court can revoke a grant on its own initiative, pursuant to Section 76 of the *Law of Succession Act*. This was succinctly stated in the case of *Albert Imbuga Kisigwa v Recho Kawai Kisigwa* [2016] eKLR where E. Mwita, J stated as follows: -

“ 13. Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not a discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased’s estate and ensure that the action taken will be for the interest of justice.”

26. In this case, the grant is inoperative and useless. The estate of the deceased requires administration without further delay. Flowing from the foregoing, I revoke the grant issued to Marzban Jehangir Austin on 19th November 2020 for being useless and inoperative.

27. I issue a new grant de bonis non administratis to Navroze Jehangir Austin.

28. I order that Navroze collect and gather the estate of the deceased, but shall not distribute it until the grant is confirmed.

29. The orders that commend themselves are the following: -

1. I revoke the grant issued on 19th November 2020 to Marzban Jehangir Austin (deceased)
2. I issue a new grant to Navroze Marzban Austin;
3. The objection dated 9th February 2023 is dismissed; and
4. As this is a succession matter, each party shall bear own costs.

30. It is so ordered.

DATED AND SIGNED AT MOMBASA THIS 19TH DAY OF JUNE 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Mr Omollo, for the Petitioner;

Mr Ngonze, for the Objector; and

Arthur – Court Assistant.

