



In re Estate of Jeremiah Ngatia Gathii (Deceased) (Succession Cause E032 of 2024) [2025] KEHC 8081 (KLR) (11 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8081 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
SUCCESSION CAUSE E032 OF 2024**

KW KIARIE, J

JUNE 11, 2025

IN RE ESTATE OF JEREMIAH NGATIA GATHII (DECEASED) (SUCCESSION CAUSE E032 OF 2024) [2025] KEHC 8081 (KLR) (11 JUNE 2025) (RULING)

BETWEEN

FRANK MWANGI NGATIA APPLICANT

AND

DAMARIS NYAMBURA NGATIA RESPONDENT

RULING

1. Jeremiah Ngatia Gathii, the applicant, has moved the court through summons dated 10 March 2025 under sections 47 and 81 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules. He seeks the following orders:
 - a. That the honourable Court be pleased to make an order substituting/ replacing the name of a co-administrator, Grace Nyambura Ngatia (now deceased), with that of Frank Mwangi Ngatia.
 - b. That the costs of this application be in the cause.
2. The application was premised on the following grounds:
 - a. That a grant of letters of administration herein was issued jointly to Damaris Nyambura Ngatia and Grace Nyambura on 28th of April, 2009.
 - b. That the said administrator was representing the 1st house.
 - c. That the said administrator was representing the 1st house.
 - d. That the applicant is the son of Grace Nyambura Ngatia and a member of the 1st House and the other family members have proposed that he takes the place of their mother



- e. That the application is made in good faith and for the benefit of the beneficiaries of the 1st House and the Estate herein.
 - f. That no prejudice will be suffered by any party if this application is allowed.
 - g. That it is in the interest of justice that the application be allowed as prayed.
3. The application was opposed by the respondent on the following grounds:
- a. The applicant does not deserve the order.
 - b. The application is contrary to the law.
4. Section 81 of the *Law of Succession Act* provides:

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:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.

5. The legal position is very clear regarding the consequences when one or more of the several executors or administrators to whom a grant of representation has been made dies. All powers and duties of the executors or administrators are vested in the surviving executor or administrator. The only exception is in a continuing trust. This is not the case in this matter. In re Estate of George Ragui Karanja (Deceased) [2016] eKLR Musyoka J. held,

The *Law of Succession Act* does not expressly provide for the substitution of personal representatives who die in office, particularly in cases where the estate is left without one. The closest provision is section 81 of the Act, which provides for vesting of the powers and duties of personal representatives in the survivor or survivors of a dead personal representative...

6. I find that the application for the substitution has no legal basis. Therefore, it is dismissed. This being a family matter, each party will bear its own costs.
7. I have noted that this matter has taken a very long time in court after the grant was issued. I am directing the administrator to move the court within 30 days to confirm the grant to pave the way for the estate distribution to the beneficiaries. If there is a failure to do so, the grant will be automatically revoked.

DELIVERED AND SIGNED AT NYANDARUA THIS 11TH DAY OF JUNE 2025

KIARIE WAWERU KIARIE

JUDGE

