



REPUBLIC OF KENYA



**In re Estate of the late Kipkoske Arap Maina alias Kipkosgei Maina (Deceased)  
(Succession Cause 41 of 2000) [2024] KEHC 7388 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7388 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 41 OF 2000  
JK SERGON, J  
JUNE 20, 2024**

**IN THE MATTER OF  
DAVID KIPNGENO RUTTO ..... PETITIONER**

**RULING**

1. The application coming up for determination is a petition for grant of letters of administration *de bonis non* in respect of the estate of the deceased who died on 18th June, 1978 limited to that part of the said estate remaining unadministered by the administrator who died before he could complete the distribution of the estate.
2. The application is supported by grounds on the face of it and the supporting affidavit of David Kingeno Rutto the applicant herein.
3. The applicant avers that the grant of letters of administration intestate was made to Kipruto A. Kosgei, who is now deceased on December 21, 2015 and confirmed on September 8, 2016. The applicant avers that the administrator passed away before he could complete the distribution of the estate.
4. The applicant avers that the said petitioner, Kipruto A. Kosgei (now deceased) was his father and the son of Kipkoske Arap Maina the deceased herein.
5. The applicant avers that in light of the foregoing, the dependants of the estate of the deceased have proposed him as an administrator for purposes of obtaining *grant de bonis* for purposes of completion of the administration of the estate of the deceased.
6. The applicant avers that the deceased left behind the following assets: LR No. Kericho/Kabianga/808 which ought to be distributed as per the attached certificate of confirmation of grant dated September 8, 2016.
7. The application is unopposed. I have considered the application and the sole issue for determination is whether to issue *grant de bonis* for purposes of completion of the administration of the estate of the



deceased, that is limited to the part of the said estate remaining unadministered. The answer is in the negative.

8. There is no specific provision in succession law which provides for substitution of a single deceased administrator/executor. Upon the demise of a single administrator/executor, the grant becomes useless and inoperative through subsequent circumstances and therefore section 76 (e) of the [Law of Succession Act](#) Cap 160 comes to play and subsequently a fresh grant of letters of administration *de bonis non* is issued.
9. This position was aptly considered in the matter of the estate of [Mary Wairimu Ngware \(deceased\)](#) in Nairobi High Court Succession Cause No. 2018 of 2001 where Justice Khamoni dismissed an application seeking substitution of a deceased single administrator without revoking the grant first under Section 76 (e) of the [Law of Succession](#).
10. In the case of the [Estate of Ngaigwo M'Shomba \(Deceased\)](#) [2019] eKLR Muchemi J. found that an application made under similar circumstances was incompetent and therefore proceeded to strike it out. The Learned Judge observed as follows;  

" ... For the above reasons stated, the application before me and the prayers seeking to directly substitute the deceased administrator is not legally and procedurally correct. The applicant advised to make an appropriate application for revocation of the grant and then seek issuance of a fresh grant of letters of administration *de bonis non* and subsequent confirmation of the grant."
11. In light of the foregoing, the application dated June 2, 2023 seeking for grant of letters of administration *de bonis non* in respect of the estate of the deceased is hereby dismissed.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 20<sup>TH</sup> DAY OF JUNE, 2024.**

.....

**J.K. SERGON**

**JUDGE**

In the presence of:

C/Assistant – Rutoh

No Appearance for the parties

