



REPUBLIC OF KENYA



In re Estate of Korir arap Malakwen - (Deceased) (Succession Cause 459 of 2014) [2024] KEHC 10913 (KLR) (20 September 2024) (Ruling)

Neutral citation: [2024] KEHC 10913 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 459 OF 2014
RN NYAKUNDI, J
SEPTEMBER 20, 2024**

IN THE MATTER OF THE ESTATE OF KORIR ARAP MALAKWEN – (DECEASED)

BETWEEN

SAMWEL KIPKETER KORIR OBJECTOR

AND

KIBIY SITIENEI ALIAS ABRAHAM KIBET SITIENEI PETITIONER

RULING

1. Berech Sitienei Stanley (deceased) filed a Petition for letters of administration was filed on 16th December, 2014. On 6th July, 2015, the grant was issued to the said Berech Sitienei Stanley. In his Petition for a grant he averred that the deceased died intestate and left the following surviving him:
 - a. Zara Chepsongok Korir Daughter
 - b. Daniel Kibor Korir Son
 - c. Abraham Sitienei Kibet Son
 - d. David Tuwei Son
 - e. Dinah Cheruto Cheruiyot Daughter
 - f. Berech Sitienei Stanley Son
 - g. Chebiwot Cheleel Grand mother
 - h. Shadrack Kipruto Keiyo Son (18 years)
2. The only identified asset belonging to the deceased was land known as Plot No. 152 Ngenyilel Settlement SCHEME with an estimated value of Kshs. 3,000,000/=.



3. On 27th May, 2021, Abraham Kibet Sitienei filed an application seeking to substitute Berech Sitienei Stanley for reasons that he is deceased now. Subsequently, the Objector filed summons for revocation of grant dated 28th May, 2021, which summons was later withdrawn vide a Notice of Withdrawal dated 31st July, 2023.
4. The court is therefore called to determine the application on substitution of a deceased administrator and distribution of the assets of the estate.

Analysis and determination

5. The *Law of Succession Act* did not envisage the issue on substitution of a deceased administrator. What is contemplated under Section 81 of the Act is that, in the event of the death of one or more of joint administrators, where there are several administrators, the surviving administrator or administrators would then have the mandate to continue with their duties to completion without the need to replace the deceased ones. That Section provides thus:

“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 executor or administrators shall become vested in the survivors or survivor of them...”

6. In the case of *Re Estate of Mwangi Mugwe alias Elieza Ngware (deceased)* [2003] eKLR, the court held the view that:

“...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.”

7. Similarly, Hon. Musyoka J. held as follows in *Re Estate of George Ragui Karanja (Deceased)* [2016] eKLR:

“The *Law of Succession Act* does not expressly provide for 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... It would appear to me that once all the holders of a grant die, section 81 of the Act would be of no application. Indeed, the said grant becomes useless and inoperative, and liable to revocation under section 76(e) of the *Law of Succession Act*, to pave way for appointment of new administrators. The appointment of fresh administrators to take the place of the previous ones following their death is subject to the provisions of sections 51 through to section 66 of the Act.”

8. The foregoing authorities in my view have given a correct interpretation on the Law of Succession on the question of substituting a deceased administrator. It bears emphasis that once an administrator has



died, the grant in question becomes inoperative and the same can only be cured by an application for revocation/annulment. To this end therefore, the application for substitution dated 26th may, 2021 is found without merit and is hereby dismissed with no orders as to costs. The beneficiaries of the estate should therefore move with speed and make an application for revocation of the grant made on 6th July, 2015 for reasons that it has since become inoperative due to the administrator's death.

9. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 20TH DAY OF SEPTEMBER 2024

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R. NYAKUNDI

JUDGE

