



REPUBLIC OF KENYA



**In re Estate of Alexander Ombikhwa (Deceased) (Succession Cause 52 of 1992) [2024] KEHC 11912 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11912 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 52 OF 1992  
WM MUSYOKA, J  
OCTOBER 4, 2024  
IN THE MATTER OF THE ESTATE OF ALEXANDER OMBIKHWA  
(DECEASED)**

**RULING**

1. I delivered a ruling herein on 30<sup>th</sup> June 2023, wherein I revoked a grant, appointed a new administratrix, but declined to set aside the orders on distribution, that had been made under the revoked grant. The new administratrix has now come back to court, on an application, dated 15<sup>th</sup> December 2023, seeking the very same orders that I declined to grant in the ruling of 30<sup>th</sup> June 2023. I trust that she had read and understood the substance of the ruling of 30<sup>th</sup> June 2023, before she conceived the instant application.
2. She appears to harbour this notion that once an application for revocation of grant is allowed, and the grant is revoked, it should follow, as a matter of course, that the orders made on distribution of the estate, at confirmation, should be vacated, to pave way for a new confirmation process. That should not always be the case. It all depends on the stage at which the previous administratrix had reached, in the administration process. It would serve no purpose to turn the clock back, by setting the process back to square one, if administration had been completed.
3. The previous grant was revoked not because the previous administratrix had obtained the grant fraudulently. She was the widow of the deceased, and she had prior right to administration. See *Kimari and another v Kimari* [1988] KLR 587 (Platt, JA, Gicheru & Kwach, Ag JJA), and In *re Estate of Aggrey Makanga Wamira (Deceased)* [2000] eKLR (Waki, J), The only small shortcoming was that she did not list the children of the deceased in her petition, which was not, of itself, necessarily fatal, for revocation of grant is discretionary. See *Mary Wangari Kibika v John Gichuhi Kinuthia & 2 Others* [2015] eKLR (Muigai, J), *Eric John Mutemi & another v Agnes Mumbanu Kinako* [2016] eKLR (Mutende, J), *Mutiso Kisini v Kyengo Kisini & another* [2016] eKLR (Nyamweya, J) and In *re Estate of Obedi Ndwiga Rubarita (Deceased)* [2021] eKLR (Njuguna, J). For sure, she did not require the consent of the children, and I explained why that was so, in my previous ruling. See In *re Estate of Samuel Simekha Chalingo (Deceased)* [2017] eKLR (Thande, J), In *re Estate of Mary Karugi Mwangi (Deceased)* [2018] eKLR (Meoli, J), In *re Estate of Gamaliel Otieno Onyiego (Deceased)* [2018] eKLR



- (JA Makau J) and [Jane Njeri Nderi v Rachel Wangari Nderi](#) [2020] eKLR (Musinga, Gatembu & M’Inoti, JJA).
4. The only reason I revoked her grant, was because she had died, and the grant made to her had become useless and inoperative as a result. See [Julia Mutune M’Mboroki v John Mugambi M’Mboroki & 3 others](#) [2016] eKLR (Gikonyo, J) and In [re Estate of Prisca Ong’ayo Nande \(Deceased\)](#) [2020] eKLR (Musyoka, J). She was the sole administratrix of the estate, and her death meant that the estate was left without an administrator, and the grant she held could not be used by any other person, for it had conferred authority only to her. A grant is personal. It is made in personam. It cannot be transferred to another individual. See [Florence Okutu Nandwa and another v John Atemba Kojwa](#), Kisumu CACA No. 306 of 1998 (Kwach, Shah & O’Kubasu, JJA)(unreported). Once the sole holder dies, the grant becomes a useless piece of paper, and it would exist for the sole purpose of revocation, to pave way for appointment of another administrator, if there would be need. See [John Karumwa Maina v Susan Wanjiru Mwangi](#) [2005] eKLR (Kwach, Shah & O’Kubasu, JJA).
  5. Sometimes it would not even be necessary to revoke the grant made to an administrator who has died. Such would be the case where that administrator had completed administration, in terms of having gathered and preserved the estate, paid debts and liabilities, obtained confirmation of the grant, and transmitted the estate to those entitled. Where administration had been completed, there would be no need to revoke the useless grant, and appoint a fresh administrator, for there would be no administration to be done. Revocation, in such circumstances, would only be necessary, where administration of the estate was left incomplete, in terms of assets and liabilities not having been ascertained, or assets not collected, or debts and liabilities not settled, or beneficiaries not ascertained, or confirmation not done, or distribution or transmission of the estate not having been done following confirmation of the grant. Revocation is not for the heck or sake of it. There must be a purpose to it.
  6. Where a sole administrator dies, leaving the administration of the estate incomplete, in one way or other, another administrator is appointed to complete the administration. The presumption would not be that the dead administrator had done completely nothing, with respect to administration, but that he had done some tasks, and the incoming administrator would come to complete the work, not to start afresh. In such cases, the grant is said to be grant de bonis non administratis, to mean a grant limited to the purpose of administering the unadministered part of the estate. See In [re Estate of ZKM Deceased](#) [2018] eKLR (Ali-Aroni, J) and In [re Estate of Brigitte Gobil \(Deceased\)](#) [2018] eKLR (Onyiego, J).
  7. In this case, the grant was made on 3<sup>rd</sup> May 1993. Confirmation of the grant happened on 24<sup>th</sup> September 1997, and a certificate of confirmation of grant was issued on 7<sup>th</sup> October 1997. There is no evidence, from the file, between 1997 and 2022, as to whether transmission happened thereafter. The administratrix, however, avers that transmission was to the sole name of the dead administratrix, who was the widow of the deceased. That would mean that transmission was completed. The estate was distributed, as per the confirmation orders, and the administration had ended. The property of the deceased herein moved to the estate of the widow, the now dead administratrix. What the new administratrix is now attempting to do is to reopen the cause, which is unnecessary, for the survivors of the deceased herein and the widow are the same individuals, and they should now be considering administration and distribution of the estate of the widow. It also means that she is attempting to have the estate of the dead administratrix administered in this succession cause of her late husband. A succession into the estate of one individual ought not be conducted within the succession cause of another. There should be only one succession cause for the estate of 1 individual dead person. See [Newton Gikaru Gathiomi & another v Attorney General/Public Trustee](#) [2015] eKLR (Odunga, J), In [re Estate of David Chege Jasan \(Deceased\)](#) [2019] eKLR (Muchelule, J), [Jeremiah Mukangu Gioche](#)



*v Samuel Kanyoro Ikua & 3 others* [2020] eKLR (Kimondo, J) and In *re Estate of Sandra Gathoni Kanyotu (Deceased)* [2022] eKLR (Onyiego, J).

8. I gave a pointer, in the ruling of 30<sup>th</sup> June 2023, that since the property was transmitted and registered in the name of the widow of the deceased, the estate herein had been wound up, and the administratrix should now seek to deal with that property as an asset in the estate of the late widow of the deceased. There is nothing more to be done here, in this cause. This file should be closed. The estate of the deceased herein does not exist. He has no estate. It was distributed.
9. The last point, worth making, is that the application herein is for revocation of a grant. Applications mounted under section 76 of the *Law of Succession Act* are for revocation of the grant, in circumstances where the process of obtaining had issues, or where the administration has failed, and or where a grant has become useless. The discretion granted to the court, by section 76 of the *Act*, is for revocation of the grant, and nothing else. Whatever other orders the court may make, alongside the revocation of grant orders, would be secondary or ancillary to the principal order, of revocation of the grant. The instant application is, therefore, misconceived. The grant, made to the previous grant-holder, was revoked on 30<sup>th</sup> June 2023, having become useless and inoperative. The grant now in place is that held by the new administratrix, the applicant in respect of the instant application. For all practical purposes, the administratrix is seeking revocation of her own grant, for there is no other grant in existence, in respect of this estate, available for revocation.
10. There can be no merit whatsoever, in the application, dated 15<sup>th</sup> December 2023. I hereby dismiss it. The Deputy Registrar shall close this file, and move it to the archives. There shall be no order on costs. Should the administratrix be minded to move to the Court of Appeal, if she is aggrieved by my orders herein, I hereby grant her leave, of 30 days. Orders accordingly.

**DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 4<sup>TH</sup> DAY OF OCTOBER 2024.**

**W.M MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Appearances

Mr. Otieno, instructed by Masiga Wainaina & Associates, Advocates for the administratrix.

