



In re Estate of Thomas Masheti Amwoga (Deceased) (Succession Cause 98 of 2003) [2023] KEHC 17878 (KLR) (17 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17878 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 98 OF 2003**

SC CHIRCHIR, J

MAY 17, 2023

IN THE MATTER OF THE ESTATE OF THOMAS MASHETI AMWOGA (DECEASED)

IN THE MATTER OF

GLADYS KHABETSA MASHATI APPLICANT

RULING

1. By way of summons dated January 23, 2023, the applicant Gladys Khabetsa Mashati seeks for issuance of a fresh grant of letters of Administration in respect of the Estate of Thomas Masheti Amwoga (Deceased). The application is brought under section 76(e) of the *Law of Succession Act*.
2. The Summons is supported by the Applicant's affidavit sworn on January 23, 2023.
3. The Applicant has informed court that the Grant in respect of the Deceased Estate had been issued to one ELiud Milimu Mashati who has since died. The applicant has attached a death certificate (EXB GKM1) showing that the Administrator died on March 3, 2022.
4. The Applicant stated that she has since been advised that owing to the death of the Administrator the grant issued as become inoperative.

Determination

5. I have considered the application and the averments in affidavit. The applicant seeks for re-issue of the grant, the current one having been rendered inoperative by the death of the Administrator, ELiud Milimu Mashati.
6. Section 76 of the *Law of Succession Act* provides as follows;-

“

“76. Revocation or annulment of grant



A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

a

b

c

d

e that the grant has become useless and inoperative through subsequent circumstances”.

7. I agree with the Applicant that Death of an Administrator is one of the circumstances that renders a Grant of letters of Administration useless or inoperative.

8. What are the consequences of an inoperative or useless grant?

The opening paragraph of section 76 is clear on what is supposed to happen: the grant ought to be revoked or annulled. Thus, the Grant is currently subsisting needs to be annulled or revoked before a new one is issued.

9. Section 76 of the *Law of succession Act* gives Authority to the court, either on its own motion or at an application of a party to annul or revoke such a Grant.

10. Consequently I make the following orders:

a The Grant of letters of Administration issued to Eliud Milimu Masheti is hereby annulled

b A new Grant do issue in favour of Gladys Khaketsa Mashati

c The Applicant to apply for confirmation of the Grant within the next 6 months

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 17TH DAY OF MAY 2023

S CHIRCHIR

JUDGE

in the presence of :-

Erick- Court Assistant

No appearance by the Applicant.

