



In re Estate of Joseph Onyango Otieno (Deceased) (Succession Cause 249 of 2011) [2023] KEHC 19034 (KLR) (19 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19034 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 249 OF 2011
WM MUSYOKA, J
JUNE 19, 2023**

RULING

1. The application dated February 23, 2022 seeks revocation of grant herein, on grounds that the administrator, Samson Otieno Onyango, had died before he had completed administration. The applicant, David Ouma Otieno, would like him replaced.
2. The death of a sole administrator ought to trigger revocation of a grant, under section 76 of the *Law of Succession Act*, Cap 160, Laws of Kenya, on grounds that the death of such sole administrator would render his grant useless and inoperative, for it would only be the dead administrator who could act under the said grant.
3. Before a grant can be revoked on such grounds, it ought to be demonstrated that the grantee was dead, to warrant that revocation. I have carefully gone through the documents attached to the affidavit of the applicant, sworn on February 23, 2022. None of them relate to Samson Otieno Onyango. There is, therefore, no evidence that he is dead, to warrant the grant made being revoked.
4. However, that deficiency is cured by the replying affidavit of the respondent, Samuel Kepher Owuor, of April 18, 2023. He concedes that Samson Otieno Onyango died before the estate was transmitted, and he has attached evidence of the death, by way of a certificate of death, dated August 1, 2016.
5. As Samson Otieno Onyango is dead, the grant made to him has become useless and inoperative. It would serve no purpose for it to remain in force. It cannot be transferred to another person. I hereby revoke it.
6. The applicant proposes the respondent, Samuel Kepher Owuor, for appointment as administrator, in the place of Samson Otieno Onyango. The respondent is agreeable to being so appointed.
7. Consequently, I do hereby revoke the grant that was made to Samson Otieno Onyango on September 27, 2011, and appoint, in his place, Samuel Kepher Owuor as administrator of the estate. A grant of letters of administration intestate shall issue to him. The orders, on distribution of the estate, made on May 9, 2013, shall remain intact, and the new administrator shall proceed, with dispatch, to distribute



and transmit the estate in accordance with those orders. The matter shall be mentioned after 6 months, to confirm completion of transmission and administration of the estate, and for closure of this file.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 19TH DAY OF JUNE 2023

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Mr. Wanyama, instructed by Wanyama & Company, Advocates for the applicant.

Mr. Sane, instructed by Peris Odoyo & Company, Advocates for the respondent.

