



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Watita Makaka (Deceased) (Succession Cause
889 of 2010) [2023] KEHC 18616 (KLR) (15 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18616 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 889 OF 2010
SC CHIRCHIR, J
JUNE 15, 2023**

**IN THE MATTER OF
SHIRO WATITA PETITIONER**

RULING

1. Before this court is the summons dated February 15, 2023. It seeks the following orders:
 - a). That the court be pleased to rectify the Grant dated May 9, 2011 and Certificate of Confirmation dated April 8, 2023 to substitute the names of Shiro Watita with the names of Belebetwa Shiro as the Administrator of the Estate herein.
 - b). That the court be pleased to rectify/amend Certificate of Confirmation of Grant dated May 4, 2013 to have the name of the Deceased amended/rectified to read Watita Makako alias Inatita makaka alias Netta Makaka.
2. It is premised on the grounds appearing on the face of the application and the affidavit of Belebetwa Shiro, the Applicant. The application is not opposed.
3. The applicant states that the Administrator of the estate one Shiro Watita has since died. She has attached a death certificate in support. She further states that she has since been appointed as the Administrator of Shiro Watita's estate. She has attached a Grant Ad litem respect of the Estate of Shiro Watita issued to her on January 20, 2023.
4. The Applicant further states that the Administrator died before the estate properties were completely distributed.
5. The Applicant further seeks to have the name of the deceased amended by addition of other names for which he was known for or referred to. The proposed addition is the name Netta Makaka, which she says appears in the title deed for parcel No. Kabras/Chemuche/1348.



Determination:

6. I have considered the Application. I understand the applicant to be seeking to be appointed as an Administrator of the Estate of the late Watita Makaka in place of Shiro Watita who has since passed on, and for the rectification of the Grant in respect to the names of the Deceased.
7. Regarding substitution, I am guided by the decision in *Justice Mutune M. M'Mboroki v John Mugambi M'Mboroki & 3 others* (2016) eKLR where the court held "there is absolutely no room of substitution of the deceased administrator under the *Law of Succession Act*. In my view, therefore, where a sole administrator is a natural person, and he or she dies, and the grant becomes useless or inoperative by reason of subsequent event of his demise, accordingly in such a case, the proper procedure is to apply for revocation of the Grant of Letters of Administration under section 76(e) of the *Law of Succession Act* on the reason that the Grant has become useless and inoperative through subsequent circumstances and a grant to be made to another person named in the Application".
8. Thus the applicant should have first sought to revoke the grant before submitting her name as a substitute, which prayer can be made in the same Application.
9. Further, the applicant requires the consent of the other beneficiaries giving her Authority to take up the administration by the the Estate of the late Watita Makaka. I am not convinced that the Grant Ad litem alone suffices for purposes of taking up administration of the estate herein. Grant ad litem is necessary for prosecution of a suit and the prosecution of this succession cause has been completed.
10. Never the less, the applicant must show that she has the consent of the other persons who are equally entitled to administer the estate to take up the Administration of the Estate.
11. The Applicant has implied that the other beneficiaries have received their entitlements and thus have no further interest in the Estate. However, there is no evidence that has been placed before this court showing that the rest of estate property/properties have indeed been transferred.
12. On rectification, the applicant has stated the name of the deceased in land parcel No.S.Kabras/Chemuche/1348 is reflected as Netta Makaka. Again, there is no documentary evidence to support this allegation. A copy of the title deed or a certificate of official search for the subject parcel has not been attached. I have also perused the record and I have not seen any copy of the title or certificate of official search for S/Kabras/Chemuche/1348.
13. However bear in mind the fact that these proceedings are about a Deceased person's Estate whose affairs must , of necessity be settled , and done so conclusively.
14. In the circumstances of this case therefore, interest of justice demands that I make the following orders:
 1. The applicant to file a consent signed by surviving heirs of the estate consenting to her appointment as an Administrator of the Deceased Estate in place of Shiro Watita
 2. The applicant to file a copy of the title deed or certificate of official search for S.Kabras/Chemuche/1348.
 3. The above documents to be submitted to the court by way of further affidavit.
 4. This matter will be given a mention date to confirm compliance of the above direction on the date of delivery of this Ruling.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 15TH DAY OF JUNE 2023.

S. CHIRCHIR



JUDGE

In the presence of:

Eric-Court Assistant

Applicant.....

