



**In re Estate of Esther Wanjiku Kiarie (Deceased) (Succession Cause
873 of 2010) [2023] KEHC 22112 (KLR) (Family) (5 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 22112 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 873 OF 2010
EKO OGOLA, J
JULY 5, 2023
IN THE MATTER OF THE ESTATE OF ESTHER WANJIKU
KIARIE (DECEASED)**

RULING

1. The Summons before this Court are dated March 6, 2023. The Administrator of the Estate, one Patrick Kiarie Kimani prays for the following:-
 - a. That this honourable court be pleased to reinstate the Succession Cause herein and/or recall the Grant of Letters of Administration intestate issued to Anne Wanjiru Njenga and Patrick Kimani.
 - b. That this Honorable Court be pleased to substitute Anne Wanjiru Njenga with Patrick Kiarie Kimani as the administrator of the deceased estate and the Grant of Letters of Administration intestate issued to Anne Wanjiru Njenga and Patrick on October 6, 2010 be rectified accordingly.
 - c. That in the alternative this honourable court be pleased to annul the grant of letters of administration intestate issued to Anne Wanjiru Njenga and Patrick Kiarie Kimani as the same becomes useless and inoperative through the death of one of the administrators.
 - d. That further in the alternative a fresh grant of letters of administration intestate be issued to Patrick Kiarie Kimani as the sole administrator of the deceased estate and the same be confirmed forthwith
 - e. That the cost of this application be costs in the cause.
2. The Summons are based on the grounds set forth therein and the Supporting Affidavit of Patrick Kiarie Kimani. It is averred that Anne Wanjiru Njenga died on December 10, 2012 without fully



administering the estate. Therefore, the Grant of Letters of Administration intestate issued to Anne Wanjiru Njenga and Parick Kiarie Kimani has since become useless and inoperative under the subsequent circumstances.

Determination

3. I have read the Summons and the Supporting Affidavit. From the record, the last time this matter was before the court was on June 27, 2012 when Njagi J issued the following orders:

“The grant made in this matter on October 6, 2010 is hereby confirmed as prayed.

The estate be shared in terms of the agreed mode of distribution.

Cost in the cause.”

4. The Certificate of Confirmation of grant dated June 27, 2012 was then collected by the then counsel of the Administrators, Messr Njoroge Nyagah & Co Advocates.
5. This matter has been inactive since June 27, 2012, after the Confirmation of grant. The matter was not closed, dismissed, or struck out.
6. The Administrator also prays to substitute Anne Wanjiru Njenga with Patrick Kiarie Kimani as the administrator of the estate. Letters of Administration of the estate was issued on October 6, 2010 to Anne Wanjiru Njenga and Patrick Kiarie Kimani. One of the administrators, Anne Wanjiru Njenga has since died without the estate being distributed. Now the remaining administrator seeks for substitution. There is no room for substitution of the deceased administrator under the Law of Succession Act. In my view, therefore, where the sole administrator is a natural person, and he or she dies, the grant becomes useless or inoperative by reason of subsequent event of his demise. Accordingly, in such case, the proper procedure is to apply for revocation of 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.
7. In this case, the estate was being administered by both Anne Wanjiru Njenga and Patrick Kiarie Kimani. The law regarding the status of a grant where deceased administrators or executors have died is well settled under Section 81 of the Law of Succession in case one or more of several executors or administrators dies. For clarity purposes, I wish to reproduce Section 81 which provides as follows:

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

8. From the foregoing, this Cause remains active. The remaining Administrator Patrick Kiarie Kimani to distribute the estate of the Late Esther Wanjiku Kiarie (deceased) as provided for in the Certificate of Confirmation of Grant.
9. Cost of the Summons be in the Cause.

It is so ordered.

DATED and DELIVERED at NAIROBI this 5th day of July 2023

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E.K. OGOLA



JUDGE

In the presence of:

N/A for the Applicants

Gisiele Muthoni Court Assistant

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