



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Wanjohi Kamau (Deceased) (Succession Cause 2093 of 2002)  
[2023] KEHC 24358 (KLR) (Family) (19 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 24358 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2093 OF 2002  
EKO OGOLA, J  
SEPTEMBER 19, 2023  
IN THE MATTER OF  
FLORENCE NJOKI WANJOHI ..... APPLICANT**

**RULING**

1. The Application before the court is dated May 29, 2023. The applicant pray for the following Orders:-
  - a. That the Certificate of Confirmation of Grant do review its orders issuing the Certificate of Confirmation of Grant on April 16, 1991 amending the same to substitute the administrator George Kamau Wanjohi who is now deceased with Florence Njoki Wanjohi.
  - b. That the costs of this application be provided for.
2. The Application is based on the grounds set therein and the affidavit sworn by the applicant.
3. Wanjohi Kamau died intestate on November 12, 1992. He was survived by his wife, three sons and two daughters. His son George Kamau Wanjohi now deceased, was issued with Grant of Letters of Administration Intestate for the administration of his Estate on December 4, 2002. The said grant was confirmed on 3<sup>rd</sup> November 2003. George Kamau Wanjohi died on March 8, 2017 and at the time of his death, he had not distributed the said Estate. The applicant is the Widow of the late George Kamau Wanjohi and her prayer is for the Confirmed Grant to be reviewed to substitute the administrator George Kamau Wanjohi (deceased) with her name.

**Determination**

4. I have considered the Application as filed, the supporting affidavit and the entire record of the court.



5. The applicant is praying for Orders of Review of the Confirmed Grant. Rule 73 of the [Probate and Administration Rules](#) gives this court powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Therefore, this court has the jurisdiction to apply Order 45 of the [Civil Procedure Rules](#). This provision stipulates that review can only be allowed under the following circumstances: discovery of new and important matter of evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the Order made; mistake or error apparent on the face of the record; and any other sufficient reason which may make the court to review its order.

6. In this instant case, none of these conditions have been met. The death of a single administrator does not fall under the ambit of Order 45.

7. A grant of representation is made in personam and is not transferrable even after death of the sole administrator. This was the holding in the case of Florence Okutu Nandwa & Another v John Atemba Kojwa, Kisumu Civil Appeal No. 306 of 1998, where the Court of Appeal held that:

“A grant of representation is made in personam. It is specific to the person appointed. It is not transferable to another person. It cannot therefore be transferred from one person to another. The issue of substitution of an administrator with another person should not arise. Where the holder of a grant dies, the grant made to him becomes useless and inoperative, and the grant exists for the purpose only of being revoked. Such grant is revocable under section 76 of the [Law of Succession Act](#). Upon its revocation, a fresh application for grant should be made in the usual way, following procedures laid down in the [Law of Succession Act](#) and the Probate and Administration (Rules)...”

8. In this respect, the position taken [Re Estate of Mwangi Mugwe alias Elieza Ngware \(deceased\)](#) [2003] eKLR, by Hon. Khamoni, J. which I subscribe to, is that:

“...the operative word is “substitution”. The [Law of Succession Act](#) has no provisions talking about substitution of a deceased single administrator...In the circumstances therefore, it is my considered view that the proper provisions of the law to apply is section 76(e) of the [Law of Succession Act](#) and Rule 44 of the Probate and Administration Rules whereby the Applicant would apply for revocation or annulment of a grant on the ground “that the grant has become useless and inoperative through subsequent circumstances.” The Applicant would proceed to put a prayer in the same application that a new grant be made to him and could as well add a further prayer, if need be, for confirmation of the new grant. The application, should, of course, be supported by consent from adult beneficiaries in the estate of the first deceased person, the second deceased person being the deceased administrator.”

9. In the same line of thought, Hon. Musyoka J. held as follows [in Re Estate of George Ragui Karanja \(Deceased\)](#) [2016] eKLR:

“The [Law of Succession Act](#) does not expressly provide for substitution of personal representatives who die in office, particularly in cases where the estate is left without one. The closest provision is section 81 of the Act, which provides for vesting of the powers and duties of personal representatives in the survivor or survivors of a dead personal representative... It would appear to me that once all the holders of a grant die, section 81 of the Act would be of no application. Indeed, the said grant becomes useless and inoperative, and liable to revocation under section 76(e) of the [Law of Succession Act](#), to pave way for appointment of new administrators. The appointment of fresh administrators to take the



place of the previous ones following their death is subject to the provisions of sections 51 through to section 66 of the Act.”

10. In light of the foregoing, it is manifest that the application dated May 29, 2023, though unopposed, is untenable. The same is hereby dismissed with an order that the costs thereof be costs in the cause.
11. Since the administrator of the estate has since passed away, the grant issued to him has become useless and inoperative through subsequent circumstances. The Applicant is at liberty to apply for the revocation of the said grant, and subsequently apply to be appointed as an administrator to the deceased estate.

It is so ordered.

**DATED and DELIVERED at NAIROBI this 19th day of September 2023**

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**E.K. OGOLA**

**JUDGE**

**In the presence of:**

**N/A for the Applicant**

**Gisiele Muthoni Court Assistant**

