



REPUBLIC OF KENYA



KENYA LAW
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**Oleparkesui & another v Parkesui (Civil Suit 83 of 2010)
[2023] KEHC 22454 (KLR) (19 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22454 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL SUIT 83 OF 2010
SM MOHOCHI, J
SEPTEMBER 19, 2023**

BETWEEN

MWAURA OLEPARKESUI 1ST APPLICANT

ERIC SEKA OLE PARKESUI 2ND APPLICANT

AND

NGANGA PARKESUI RESPONDENT

RULING

1. By Summons Dated the 21st September 2022, filed under certificate of urgency, pursuant to Sections 47, 82 and 83 of the Law of Succession Act and Rule 73 of the *Probate and Administration rules* seeking the following Orders;
 - i. That this application be certified urgent and be heard on priority basis.
 - ii. That pending the hearing and determination of this petition, this Honorable Court be pleased cancel all the illegal subdivisions resulting from subdivisions of PINo. Narok CisMara/Imashariani/Morijo/15 and all the resultant titles, and the status of the land do revert as it was at the time of filing this petition.
 - iii. That the 1st and 2nd Applicants herein be allowed to substitute the Petitioner/Respondent in the petition filed herein.
 - iv. That this Honorable Court be pleased to grant any other order it may deem fit the circumstance.
 - v. That costs be provided for..
2. Prayers i and ii above were Allowed and granted by Lady Justice T. Matheka on the 31st November 2022 and only Prayer iii remained for a substantive response by the respondent which has not materialized.



3. This Application is hence unopposed, However the court on the 9th May 2023 directed the Applicants to file written submissions on the sole prayer and the same was duly filed on the 17th of May 2023.
4. In submission the Applicants have significantly regurgitated the assertions as contained in their affidavit dated 22nd September 2022, and I shall not repeat the same here. The Applicants submit that the estate cannot remain un-administered and that the respondent failed in this duty, having failed to apply for confirmation.
5. That lack of diligence is one of the grounds for revocations under Section 76 of the Law of Succession.
6. This Court is thus being invited to substitute the Respondent with the Applicants and issue them with a grant of representation.
7. Letters of Administration were issued to the Respondent and Paul Kinuthia Thinga (Deceased) on the 25th June 2010. The two administrators never applied for the confirmation of grant despite repeated notices from the court. Eventually on the 20th July 2015 Justice Ongeri revoked the grant of representation.
8. By the time the Applicants moved court on the 5th October 2022 it was almost five (5) years to the date since the grant was revoked. This estate has been and continues to be without an official administrator.
9. This Court is equally unpersuaded that a substitution of administrators can occur thru pronouncement by the court under succession law.
10. In the case of *Florence Okutu Nandwa & Another vs. John Atemba Kojwa*, Kisumu Civil Appeal No. 306 of 1998, the Court of Appeal made it clear 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)...”
11. This Court would thus hasten that, a revoked grant cannot be reactivated for purposes of substitution.
12. This Court is equally alive to the fact that the estate of the deceased has been without an administrator since July 2015 and shall issue appropriate directions in regards to the same.

Conclusion

13. In the upshot, prayer number (iii) of the application dated 21st September 2020, fails for want of merit and is accordingly dismissed, I issue the following orders invoking the inherent jurisdiction of this courts;
 - a. The 1st and 2nd Applicants are hereby directed to submit and file a complete petition for issue letters of administration within the next 30days from the date hereof.
 - b. This being a family matter, parties shall bear their own costs.
 - c. Mention date for direction immediately after 60 days from today to be fixed by the Court Assistant.



It is so ordered.

SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 19TH SEPTEMBER 2023

MOHOCHI S.M

JUDGE

