



**In re Estate of Kimeto Cheroigin (Deceased) (Succession Cause  
346 of 2015) [2023] KEHC 23766 (KLR) (12 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23766 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 346 OF 2015  
JK SERGON, J  
OCTOBER 12, 2023  
IN THE MATTER OF THE ESTATE OF KIMETO CHEROIGIN (DECEASED)**

**BETWEEN**

**KIPKEMOI METTO ..... PETITIONER**

**AND**

**JOSEPH KIPNGENO KIMETO ..... APPLICANT**

**RULING**

1. The application coming up for determination by this court is the chamber summons dated 26th July, 2023 in which the applicant seeking the following orders:
  - (i) Spent
  - (ii) That Joseph Kipngeno Kimeto be allowed to be the Legal Representative of the estate of Kimeto Cheroigin (Deceased) and be made a party in this suit as the Petitioner in this succession in place of Kipkemoi Metto
  - (iii) That the Grant of Letters of Administration Intestate (P&A 41) issued to the Petitioner Kipkemoi Metto on 12th April, 2016 be re-issued to Joseph Kipngeno Kimeto and the name of Kipkemoi Metto be removed
  - (iv) That the Certificate of Confirmation of Grant (P&A 54) issued on 24th April, 2023 to the Petitioner Kipkemoi Metto be re-issued to Joseph Kipngeno Kimeto to proceed with registration of the documents of lands office
  - (v) That costs of this Application be in the cause.
2. The Application is supported by grounds on the face of it and a supporting affidavit sworn by Joseph Kipngeno Kimeto the Applicant herein.



3. The Applicant avers that he is one of the heirs of the estate of the late Kimeto Cheroigin. The Applicant further avers that the Petitioner herein Kipkemoi Metto is not cooperative and that the dependants of the estate of the deceased herein had signed a consent for substitution of grant of letters of administration intestate to be issued to Joseph Kipngeno Kimeto the Applicant herein instead of Kipkemoi Metto pursuant to a resolution in a family meeting held on 2nd July, 2023.
4. The Applicant avers that the Administrator (the Petitioner herein) to whom the Grant of Letters of Administration Intestate were issued after the confirmation of grant on 24th April, 2023 had refused to sign transmission forms at the Lands Office to effect transfer to the beneficiaries. The Applicant avers that the Petitioners whereabouts were unknown as such they had not been able to transact any business in the estate of their late father Kimeto Cheroigin the deceased herein.
5. The Applicant therefore seeks to be substituted as the administrator of the estate of the deceased herein instead of Kipkemoi Metto and further that the Certificate of Confirmation of Grant (P&A 54) issued on 24th April, 2023 to Kipkemoi Metto be rectified to read Joseph Kipngeno instead of Kipkemoi Metto.
6. The Application was not opposed.
7. I have considered the application herein and the sole issue for this court's determination is whether the applicant herein can be substituted as the administrator of the estate of the deceased. I have considered several authorities in the High Court and in the Court of Appeal on the issue of substitution.
8. *In the Re Estate of Mwangi Mugwe alias Elieza Ngware (deceased)* [2003] eKLR, Hon. Khamoni, J. stated as follows:

“...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. *Julia Mutune M'mboroki v John Mugambi M'mboroki & 3 others* [2016] eKLR the Court held;

“There is absolutely 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 the 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.”



10. In the case of *Florence Okutu Nandwa & Another v 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. In the instant application the applicable section of the law for revocation and/or annulment would be section 76 (d) of the *Law of Succession Act* which states as follows;

“ A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion— (d) that the proceedings that the person to whom the grant was made has failed, after due notice and without reasonable cause either— (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or (ii) to proceed diligently with the administration of the estate; or (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular...”

12. The Applicant in paragraph 7 of the supporting affidavit in support of the application for substitution requests this court that the Certificate of Confirmation of Grant (P&A 54) issued on 24th April, 2024 to Kipkemoi Metto be rectified to Read Joseph Kipngeno Kimeto, I wish to address myself on the issue of rectification as follows; rectification of grant of letters of administration is limited to matters set out in section 74 of the *Law of Succession Act* and rule 43 of the *Probate and Administration Rules*. These matters specifically refer to corrections of error which the court may order without changing the substance of the grant. These include errors in names, description of any person or thing or an error as to the time or place of death of the deceased or the purpose for which a limited grant was issued. An error which is envisaged under the section is a mistake which may occur on the face of the grant like typing errors in names of persons or things. *In the Matter of the Estate of Geoffrey Kinuthia Nyamwinga (Deceased)* [2013] eKLR it was held that;

“The law on rectification or alteration of grants is Section 74 of the *Law of Succession Act* and Rule 43 of the Probate and Administration Rules...What these provisions mean is that errors may be rectified by the court where they relate to names or descriptions, or setting out the time or place of the deceased’s death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general...”

13. Pursuant to the holding in *Florence Okutu Nandwa & Another v John Atemba Kojwa* (supra) a decision by the Court of Appeal which is binding on this Court. There can be no substitution of an administrator by way of filing an application for substitution. For one to be appointed an administrator, he must follow the process under the *Law of Succession Act* and the Probate and Administration Rules. Consequentially an administrator coming on record through an application for substitution will not be properly on record and grant issued would be easily revoked as the proceedings



to obtain it were defective in substance. The application to substitute the petitioner is therefore not properly before this court.

14. In the light of the foregoing, it is manifest that the application dated 26th July, 2023, though unopposed, is untenable. The same is hereby dismissed with costs being in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH OCTOBER, 2023**

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**J.K. SERGON**

**JUDGE**

