



**In re Estate of Esther Wanjiku Maina & Maina Kabutha  
(Deceased) (Succession Cause 362 & 639 of 1993 (Consolidated))  
[2023] KEHC 24435 (KLR) (Family) (9 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24435 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY**

**SUCCESSION CAUSE 362 & 639 OF 1993 (CONSOLIDATED)**

**EKO OGOLA, J**

**OCTOBER 9, 2023**

**IN THE MATTER OF THE ESTATE OF ESTHER WANJIKU MAINA (DECEASED)**

**RUTH NJERI KARIUKI ..... 1<sup>ST</sup> APPLICANT**

**TABITHA WAMBUI ..... 2<sup>ND</sup> APPLICANT**

**IN THE MATTER OF**

**RUTH NJERI KARIUKI ..... 1<sup>ST</sup> APPLICANT**

**TABITHA WAMBUI ..... 2<sup>ND</sup> APPLICANT**

**AS CONSOLIDATED WITH**

**SUCCESSION CAUSE 639 OF 1993**

**IN THE MATTER OF**

**WILFRED KAMAU MAINA ..... 1<sup>ST</sup> APPLICANT**

**SUSAN WAMBUI KARIUKI ..... 2<sup>ND</sup> APPLICANT**

**RUTH NJERI KARIUKI ..... 3<sup>RD</sup> APPLICANT**

**RULING**

1. There are two applications before this Court. The first is the Amended Summons dated February 23, 2023 in the matter of the Estate of Esther Wanjiku Maina. The Applicants, Ruth Njeri Kariuki and Tabitha Wambui Kariuki pray for the following:-



- a. Spent;
  - b. That the grant of letters of Administration issued on the 8<sup>th</sup> February 2005 to Harrison Kariuki Maina and Robinson Gathii Maina be annulled.
  - c. That Ruth Njeri Kariuki and Tabitha Wambui Kariuki the administrators of the estate of Harrison Kariuki Maina-now deceased be appointed as administrators of the deceased in this cause Esther Wanjiku Maina to replace Harrison Kariuki Maina and Robinson Gathii Maina both now deceased.
  - d. That upon appointment in terms of prayer 2 and 3 above, the said grant to Ruth Njeri Kariuki and Tabitha Wanbui Kariuki be confirmed and the estate of Esther Wanjiku Maina be distributed as shown in the schedule at paragraph 12 of the affidavit in support of this Summons sworn by Ruth Njeri Kariuki and Tabitha Wambui Kariuki on 3<sup>rd</sup> November 2022
  - e. That the costs of this application be in the cause.
2. The second application is Summons for Revocation or Annulment of Grant in the matter of the Estate of Maina Kabutha. The Summons are dated 14<sup>th</sup> March 2023. The Applicants, Wilfred Kamau Maina, Susan Wambui Kariuki, and Ruth Njeri Kariuki. They pray for the following:-
- a. That the letters of administration issued to Robinson Gathii Maina, Ephantus Kabutha Maina and Harrison Kariuki Maina on the 6<sup>th</sup> December 2001 be revoked on the grounds that all the above-mentioned administrators have since died.
  - b. That upon revocation in prayer (a) above, a fresh grant of letters of administration do issue to Wilfred Kamau Maina, Susan Wambui Kariuki, and Ruth Njeri Kariuki.
  - c. That the costs of this application be paid out of the estate.
3. The late Maina Kabutha was married to the late Esther Wanjiku Maina. Maina Kabutha (deceased) died on 23<sup>rd</sup> September 1992. Grant of letter of administration was issued on 6<sup>th</sup> December 2001 to Ephantus Kabutha Maina, Robinson Gathi Maina, and Harrison Kariuki Maina. The three administrators have since died. It is for this reason that the Applicants in both Applications pray for the said grant to be revoked. The Applicants in both Applications further pray for them to be appointed as the new administrators of the estate of Maina Kabutha (deceased)

### **Determination**

4. I have analyzed the two Applications, the Affidavits in support, and the entire record of the Court. So, have the Applicants presented sufficient evidence to warrant revocation or annulment of the grant issued by this Court on 21<sup>st</sup> August 2017?
5. The Law on the Revocation of Grant is stipulated in Section 76(e) of the [Law of Succession Act](#). It gives the Court the power to revoke a grant provided the conditions stipulated therein have been met. It states that:-

“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:-

- a. ....
- b. ....



- c. ....
  - d. ....
  - e. The grant has become useless and inoperative through subsequent circumstances.
6. In this case, the grant was issued in the year 2001 and all three administrators have since passed away. The grant has therefore become useless and inoperative through subsequent circumstances and it is, hereby revoked.
  7. Should the Applicants be appointed as the administrators of the estate on Maina Kabutha? Grant of letters of Administration is made in personam and is not transferrable even after the death of the administrators. This was the holding in the case of *Florence Okutu Nandwa & Another vs. 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 a 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. The *Law of Succession Act* is clear on the procedures to be followed to apply for a grant of letter of Administration and how the said grant can be confirmed. This process should not be set aside for reasons that the administrators have died.
  9. The upshot is that prayer (b) of the Amended Summons dated 23<sup>rd</sup> February 2023 is allowed. Prayer (a) of the Summons for revocation dated March 14, 2023 is hereby allowed. The Applicants are at liberty to Petition the Court to be appointed as the administrator of the deceased estate.

It is so ordered

**DATED AND DELIVERED IN NAIROBI THIS 9<sup>TH</sup> DAY OF OCTOBER 2023**

.....

**E.K. OGOLA**

**JUDGE**

In the presence of:

Mr. Kingara for the Applicants

Ms. Kerubo for the Applicants

Gisiele Muthoni Court Assistant

