



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

SUCCESSION CAUSE NO. 218 OF 1997

IN THE MATTER OF THE ESTATE OF SIMEON KAMAU KURIA DECEASED.

-AND-

BEATRICE WANGUI KAGUNDA APPLICANT

Coram: Hon. Justice R. Nyakundi

M/S J.N Njuguna for the applicant

R U L I N G

1. By an application dated 22nd November, 2021, the Applicant seeks orders that;

1) Spent

2) This Honourable Court be pleased to issue orders for substitution so that the Applicant becomes the administrator of the estate of **SIMEON KAMAU KURIA** (Deceased) in place of **JOHN KARIUKI KAMAU** (Deceased) Land Parcel No. Eldoret Municipality Block 11/46 pending the hearing and determination of this application.

3) Costs of this application be in the cause.

Applicant's Case

2. The Applicant's case is that she is a daughter to the deceased. That upon the demise of the deceased herein the Applicant's brother **JOHN KARIUKI KAMAU** (Deceased) was appointed the administrator of the estate of the deceased. The Applicant now seeks orders to substitute **JOHN KARIUKI KAMAU** (Deceased) as the administrator of the deceased estate. That the beneficiaries of the deceased's estate are brother and sisters to the Applicant.

Respondent's case

3. In response, the Respondent stated that she is the administrator of the estate of the late **SIMEON KAMAU KURIA** (Deceased) having been appointed vide the Grant of Letters of Administration Intestate dated March, 2019. That the Respondent has since been issued with a Rectified Certificate of Confirmation of Grant dated 22nd June, 2021. The Respondent's case is that she was appointed the administrator of the Estate of the Late **SIMEON KAMAU KURIA** (Deceased) following the death of the previous administrator **JOHN KARIUKI KAMAU**. The Respondent's contends that she continues to administer the estate diligently and that on 7th May, 2021 she filed and serve the Statement of Account pertaining to the deceased's estate. That the estate of the deceased comprises of one asset that is parcel of land known as Eldoret Municipality Block 11/46 which has since been surveyed/sub-divided and that each beneficiary has since been shown their respective shares/beacons.

4. It is without doubt that this is a longstanding matter, and a perusal of the record indicates that a Grant of Letters of Administration Intestate was issued on 20th November, 2014, to **JOHN KARIUKU KAMAU (Deceased)**. **It is also clear that the said JOHN KARIUKI KAMAU died on 2nd August, 2017.** A further perusal of the record indicates that on 13th March 2019, **ANNE WANJIRU** was issued with the Letters of Administration Intestate with the respect to the deceased's estate.

Analysis and Determination

5. The Applicant herein is seeking to substitute the deceased administrator so as to complete the administration of the estate. The

Respondent is opposed to the application on the grounds that the issues raised by the Applicant are res judicata since she has already been appointed administrator of the deceased's estate.

6. The application herein is seeking to substitute a single administrator who died before completion of the estate. Where a single administrator or executor dies, before completion of the succession proceedings, the appropriate direction to take is for the Applicant to apply for a grant of **letters of administration de bonis non**. This can only be done by revoking the grant under Section 76 (e) and rule 44 of the Probate and Administration rules and paragraph 16 of the 5th schedule. The grant in question has since become useless and inoperative.

7. It is worth noting that, the **Law of Succession Act** does not favour the application for substitution in the sense that it does not provide for such a scenario as is presented by the instant application.

8. In **Julia Mutune M'mboroki v John Mugambi M'mboroki & 3 others [2016] eKLR**

The Court held;

There is absolutely no room of 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.

9. There can be no substitution of an Administration by way of filing an application for substitution. For one to be appointed an administrator, he/she must follow the process under the **Law of Succession Act** and the **Probate and Administration Rules**. Therefore, the application before me and the prayers seeking to directly substitute the deceased administrator is not legally and procedurally correct.

10. From the record it's crystal clear that ANNE WANJIRU was duly appointed administrator to the estate of the late SIMEON KAMAU KURIA upon the demise of JOHN KARIUKI KAMAU and was issued with a Certificate of Confirmation of grant of letters of administration dated 22nd June, 2021. The Applicant herein, is being mischievous in seeking to substitute the late JOHN KARIUKI KAMAU as administrator while being fully aware that the deceased's estate already has a duly appointed administrator in place.

11. Consequently, the present application is lacking in merit and an abuse of court process. Accordingly, I hereby dismiss it with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 15th DAY OF FEBRUARY, 2022.

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R. NYAKUNDI

JUDGE

In the presence of:-

1. Mr Njuguna for the applicant
2. The Objector – Beatrice Kagunda