



**Chesiyna v Chesiyna & 2 others (Succession Cause 26 of 2020)
[2024] KEHC 15983 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15983 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 26 OF 2020
HI ONG'UDI, J
DECEMBER 17, 2024
IN THE MATTER OF THE ESTATE OF ELISHA CHEBII CHESIYNA (DECEASED)**

BETWEEN

JEPTUM CHESIYNA APPLICANT

AND

AMELIA JEPTOO CHESIYNA 1ST RESPONDENT

LOICE CHEPKWONY 2ND RESPONDENT

**KAPTEN CHEPKWONY CHESIYNA & JERONO CHESIYNA 3RD
RESPONDENT**

RULING

1. The applicant has filed the notice of motion dated 1st March 2021 seeking to substitute one of the administrators Christine Targok Chesiyna who is now deceased with Jeptum Chesiyna.
2. The application is supported by the affidavit sworn by the applicant on even date. She deponed that the deceased was her mother and she had applied for grant of letters ad litem in Nakuru Succession Cause No. E019 OF 2024. Further, that their deceased mother was survived by nine (9) children and it was only fair that one of them substitutes her as the 1st administrator in the suit.
3. The 1st respondent filed an affidavit of protest dated 16th April 2024 opposing the application. She averred that they did not consent to the applicant being an administrator to the estate.
4. The 2nd and 3rd respondents equally filed affidavits of protest dated 27th May 2024 and 16th April 2024 respectively. They proposed that the 1st respondent be appointed as the administrator in place of their deceased sister.



5. Directions were taken on 31st October 2024 that the application be canvassed by way of written submissions. Counsel for the Petitioners and the 2nd household informed the court that they were not participating in the application. Therefore, it is only the applicant who filed submissions.
6. The applicant's submissions were filed by Kasamani & Associate Advocates and are dated 1st October 2024. Counsel urged the court to allow the applicant's application as prayed. The court's attention was drawn to section 27 of the [Law of Succession Act](#) and the decisions in In Re Estate of Jeniffer Kusuro Musiwa (Deceased) [2021] eKLR, Re Estate of Helena Wangechi Njoroge (Deceased) [2015] eKLR and Re estate of Henry Kithia Mwitari (Deceased) [2021] eKLR.

Analysis and determination

7. The issue before the court for determination is whether Christine Targok Chesiyana should be substituted as an administrator, in place of her deceased mother.
8. In deciding the issue of substitution this court is guided by Section 81 of the [Law of Succession Act](#) which provides as follows: -

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involves any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of the trust until the court has made a further grant to one or more persons jointly with him”.

9. Further, the Court of Appeal in John Karumwa Maina v Susan Wanjiru Mwangi [2015] eKLR stated as follows: -

“In the case of Florence Okutu Nandwa and Another Vs John Atembakojwa, Court of Appeal Civil Appeal in Civil Appeal No. 306 of 1998 at Kisumu where it was held that a court should not issue a grant to a person who has not sought for it. The judge stated as follows:-

“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). I agree with the respondent that there cannot be a substitution of the dead administrator by his wife in the manner proposed by the applicant.”

10. Additionally, in in Julia Mutune M'mborok Vs John Mugambi M'mboroki & 3 others {2016}KLR the court held as follows:-
 - a. 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.

- b. 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.

11. In present application the applicant seeks to substitute her mother who had been appointed as an administrator to the deceased's estate. The above cited authorities and provision of the law are clear on the issue of substitution of an administrator. This court is bound by the Court of Appeal decision as set out above. A deceased administrator cannot be replaced by substitution. A person wanting to be added as an administrator in place of a deceased administrator has to seek administration as per the provision of the *Law of Succession Act*.
12. Moreover, in this cause there are two surviving administrators who are left behind to administer the estate of the deceased, and are covered under section 81 of the *Law of Succession Act*. They are expected to ensure that the interests of all beneficiaries are taken care of during the distribution.
13. The upshot is that the application for substitution lacks merit and is dismissed with no order as to costs.
14. Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 17TH DAY OF DECEMBER, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

