



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**SUCCESSION CAUSE NO. 151 OF 2007**

**IN THE MATTER OF THE ESTATE OF GATHI MWATE (DECEASED)**

**BETWEEN**

**JOANES MWANGI GATHI.....PETITIONER**

**VERSUS**

**PETER NJOROGE MWANGI.....RESPONDENT**

**Coram - R. Nyakundi**

Ms. Mukabane & Kagunza Advocate

Ms. J. K. Birir Advocate

**RULING**

The application before me is made pursuant to Section 56, 66 of the Succession Act and Rule 49, 59 and 73 of the Probate and Administration Rules seeking one substantive order thus:

i) That a fresh grant of letters of administration be made to the named persons herein to with : -

Joanes Mwangi Gathi, Peter Njoroge Mwangi, Joseph Haiga Gathi and James W. Mwangi to be administrators of the interstate estate of Gathii Mwate.

ii) In support of the application are averments contained in the affidavits of Johnes Mwangi Gathi with further supplementary affidavits dated 8.11.2021.

iii) Apparently, one Peter Njoroge Mwangi though being one of the proposed administrators in the said application filed a replying affidavit dated 28.4.2021 with some kind of attempts to oppose the applicant's appointment.

**BACKGROUND: -**

It is undisputed that following the ruling of Omondi J. as she then was dated 4.5.2020 in which grant of letters of administration were revoked, the intestate of Gathi Mwate remains without a legally appointed administrator or administrators to administrate the Estate as required by the enabling provisions of the law. As a result there is need for the making of the grant of letters of administration to that effect. Essentially that is the objective premised in the chamber summons by the application dated 19.4.2021. It is perhaps useful at this stage to briefly state that all those facts pleaded by the Respondent on the deceased real Estate and other grievances on intermeddling or distribution of the estate be left to be determined at an opportune time during the confirmation of grant proceedings..

**RESOLUTION: -**

The ultimate issue to be decided is whether the chamber summons of 19.4.2021 as filed on 21.4.2021 seeking a substantive relief on the making of a grant of letters of administration to intestate Estate of Gathi Mwate should be allowed.

**THE LAW:-**

As against the applicant's chamber summons, a grant of representative under Section 56(1) may be made to more than one person....

provided that the persons so intimated to be appointed are not minors, of unsound mind, or bankrupt or to more than four person in respect of the same Estate.

In this respect the law envisages that the court may make an order for the makinng of Grants of Representation and appointing an administrator, to represent the deceased's estate for the purpose of succession who have the following qualities: -

- (a) Competence and fairness to conduct proceedings leading to the distribution of the estate.
- (b) The person so appointed has no interest in the estate which is adverse to that of the intestate estate aspirations of the deceased person.
- (c) Being a person to listen to the deceased voice be a person of good conduct and moral standing who can foster unity, peace, equity, equality, justness, propriety and fairness in administering the Estate and render appropriate accurate to foreclose the intestate estate.
- (d) The other relevant provisions in the receiving of grants of representation are to be found under Section 60, 62, 63, 64, 65 and 66 of the Law of Succession Act.

It is clear that an administrator derives his or her title and power from the grant of letters of administration. So here, without appointment of an administrator all acts pertaining to the intestate Estate of the deceased remain moribund or illegal.

There is no suit also maintainable in a court of law against intestate estate without a legally recognized administrator duly issued with grants of letters of representation. The letters of grant of administration vests all rights of an intestate Estate in the administrator/ administrators at the moment of death of the deceased. From a comparative jurisprudence. The court in **Piggott -Vs- Aulton (2003) EWCA** held interalia with respect to a deceased estate without representative

***“The natural personality of the deceased came to an end on his death. His legal persona, there is the right to name possession of his property and the obligation to discharge his liabilities could have passed to his personnel representatives, as between whom and the deceased there would have been an identity of persona. But the deceased in this case had no personal representatives.....”***

In the instant proceedings following the revocation of grant of letters of representation by this court on 4.5.2020 no action was to be brought against the intestate Estate without a recognized legal personality to step in the shoes of the deceased.

This is therefore a proper application for the court to exercise discretion on these fundamental aspect of appointing administrators to the intestate estate of the deceased. The nitty, gritty of the entire estate is a preserve for the next stage of the proceedings. In the circumstances, the chamber summons dated 19<sup>th</sup> April, 2021 ought to be granted as prayed in terms of prayer No. (a) of the application.

Costs of the application be in the cause.

**DATED, SIGNED AND DISPATCHED VIA EMAIL AT ELDORET THIS 15<sup>TH</sup> DAY OF NOVEMBER, 2021.**

**R. NYAKUNDI**

**JUDGE**