



**REPUBLIC OF KENYA**

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

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 2777 OF 2008**

**IN THE MATTER OF THE ESTATE OF LABAN NJENGA MUNDIA DECEASED)**

**ESTHER NJERI NJENGA.....PETITIONER/RESPONDENT**

**VERSUS**

**ALVIN KAMANDE NJENGA.....1<sup>ST</sup> APPLICANT/BENEFICIARY**

**DERRICK KARIUKI NJENGA.....2<sup>ND</sup> APPLICANT/BENEFICIARY**

**RULING**

1. Before this Court is summons for confirmation of Grant dated **12<sup>th</sup> March 2020** filed by **Josephine Nduta** (hereinafter the **Applicant**). The summons was supported by an Affidavit of even date and Further Affidavit dated **29<sup>th</sup> July 2021** both sworn by the Administrator which Affidavit set out the proposed mode of distribution of the Estate.

2. **ALVIN KAMANDE NJENGA** (hereinafter '**the Objector**') filed a Replying Affidavit which was effectively an Affidavit of Protest dated **23<sup>rd</sup> July 2021** to the summons for confirmation of Grant. The Objector also filed a supplementary affidavit dated **August 2021**. The summons was canvassed by way of written submissions. The Administrator filed her written submissions dated **26<sup>th</sup> August 2021** whilst the Objector relied upon his written submissions also dated **26<sup>th</sup> August 2021**.

**BACKGROUND**

3. This Succession Cause relates to the estate of **LABAN NJENGA MUNDIA** (hereinafter '**the Deceased**') who died intestate on **9<sup>th</sup> November 2006** at the **Kenyatta National Hospital** in **Nairobi**. The Deceased was survived by the following:-

**(i) Esther Njeri Njenga – widow (now also Deceased)**

**(ii) Jane Wanjiku Njenga**

**(iii) Josephine Nduta Njenga**

**(v) Judith Wanjiru Njenga**

**(vi) Bancy Gathoni Njenga**

**(viii) Derrick Kariuki Njenga**

**(ix) Alvin Kamande Njenga**

4. Following the demise of the Deceased Grant of Letters of Administration Intestate was made to the widow **Esther Njeri Njenga** on **23<sup>rd</sup> September 2009**. The said Grant was later duly confirmed and a certificate of confirmed Grant was issued in the name of **Esther Njeri Njenga** on **10<sup>th</sup> November 2010**.

5. The Objector then filed Amended Chamber summons dated **12<sup>th</sup> April 2013** (Annextrue 'AKN-2' to his Replying Affidavit) seeking to revoke the Grant issued to his mother **Esther Njeri Njenga**. Hearing of the summons for revocation of Grant commenced before **Hon Lady Justice Onger**. However during the course of that hearing the said Administrator **Esther Njeri Njenga** passed away on **1<sup>st</sup> February 2017**. Following her demise parties appeared before **Hon Justice Onger** who according to the Applicant appointed the Applicant as the Administrator of the estate of the Deceased. The Applicants position is that as the court appointed administrator of the estate of the Deceased following the demise of her mother it is she who now has the authority and right to apply for confirmation of the Grant.

6. The Objector does not agree with the position held by the Applicant. The Objectors position is that the Applicant was appointed as administrator by the court **only for purposes** of prosecuting the summons for revocation of Grant dated **12<sup>th</sup> April 2013**.

7. The Objector contends that his summons dated **12<sup>th</sup> April 2013** seeking revocation of the Grant issued to his mother **Esther Njeri Njenga** has not been determined to date. That in the circumstances the Applicant cannot move the court to confirm the Grant issued in respect of the estate of the Deceased. That if said Grant is confirmed then this would mean that the court has dismissed his summons seeking for revocation of the Grant without a substantive hearing on merit.

#### **ANALYSIS AND DETERMINATION**

8. I have carefully considered the summons for confirmation of Grant, the Protest filed by the Objector as well as the written submissions filed by both parties.

9. According to the Applicant her appointment as Administrator by the court on **9<sup>th</sup> December 2019**, following the demise of her mother in whose name the Grant had been issued, was a complete and substantive appointment of herself as Administrator in respect of the estate of the Deceased. The applicant asserts that there was no limitation to her appointment as Administrator.

10. The Applicants position is that the court did **not** appoint her as Administrator merely to substitute the late **Esther Njeri Njenga** in the hearing of the summons for revocation of Grant. That her appointment by **Hon Justice Onger** represented a fresh Grant issued to her. The applicant submits that the real intention of the Objector is to deny herself and her sisters their right to inherit the estate of their late father (the Deceased).

11. The Objector submitted that the court had no powers to appoint a substantive Administrator to the estate of the Deceased. He asserts that the Grant which had been issued to **Esther Njeri Njenga** became useless and inoperative upon her death on **21<sup>st</sup> February 2017** when she passed away. The Objector insists that the court merely appointed the Applicant as Administrator to step into the shoes of her late mother in order to substitute her during the hearing of the summons for revocation of Grant.

12. I have carefully perused the record of the proceedings before **Hon Lady Justice Asenath Onger**. On **9<sup>th</sup> December 2017** the court was informed that the Administrator who had been appointed to represent the estate of the Deceased had died. That another related **Succession Cause No. 544 of 2017** had been filed in relation to the estate of **Esther Njeri Njenga**. The court then proceeded to make the following orders:-

#### **“ORDER**

**1. This matter has been referred to the Court for directions since it is partly heard.**

**2. The case had been consolidated with Succession Cause No. 544 of 2017.**

**3. The Deceased in 544 of 2017 was the administrator of this estate.**

**4. I direct that letter of Administration be issued to JOSEPHINE NDUTA for purposes of proceedings with the case.**

**5. ....” (own emphasis)**

13. The directions made by the court were clear and unambiguous. The Applicant **Josephine Nduta** was appointed by the court as administrator **ONLY FOR PURPOSES** of proceeding with the case i.e., the summons seeking revocation of the Grant. By no stretch of imagination can it be said that the court appointed the Applicant as the substantive administrator of the estate. Indeed if the Honourable Judge had intended to appoint **Josephine Nduta** as the substantive Administrator of the estate to replace **Esther Njeri Njenga** then I have no doubt that she would have stated so in clear terms and would have further ordered that a fresh Grant be issued in the name of **Josephine Nduta**.

14. Moreover in law, the court had no powers to appoint a substantive administrator of the estate without following the procedure set out in the **Law of Succession Act Cap 160, Laws of Kenya**. Further, it would not be proper for the court to appoint as Administrator a person who had **not** applied to be so appointed. The role of an Administrator is not one to be taken lightly. It is an onerous obligation which has several statutory obligations attaching to it. One must volunteer to be appointed as Administrator and must be ready and willing to take up the duties and obligations of an administrator. There is no evidence that the **Josephine Nduta** the Applicant herein ever applied to be appointed as Administrator in place of her mother.

15. Thirdly, an appointment as Administrator is made ‘**in personam**’ and is exclusive to the appointee. It **cannot** be transferred from one party to another. In the case of **FLORENCE OKUTU NANDWA & ANOTHER VS JOHN ATEMBA KAJWA Kisumu civil Appeal**

No. 306 of 1998 the Court 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”.** (own emphasis)

16. The legal position is that where a sole Administrator passes away then the Grant becomes useless and inoperative. The person seeking to replace the Deceased Administrator must **first** apply to have the initial Grant revoked and include a prayer that a fresh Grant be issued to himself with a further prayer for confirmation of the Grant if relevant. Such an application must of course be supported by a consent signed by all the beneficiaries. (See **RE ESTATE OF MWANGI MUGWE alias ELIEZA NGWARE(Deceased) [2003] eKLR**. The above procedure was **not** followed in this case.

17. It is common ground that the person to whom the confirmed Grant had been issued one **Esther Njeri Njenga** passed away on **21<sup>st</sup> February 2017**. A copy of her Death Certificate Serial Number **471619** has been filed in Succession Cause No. **544 of 2017**. The law provides for the fate of a Grant where the person appointed as Administrator has died. **Section 76 (e)** of the **Laws of Succession** provides that:-

**“76 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—**

**(e) that the grant has become useless and inoperative through subsequent circumstances”.**

18. In the **FLORENCE OKUTU NANDWA CASE** (Supra) the Court stated as follows:-

**“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). 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.”(own emphasis)**

19. Further 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 if he or she dies, the grant becomes useless or inoperative by reason of subsequent event of his demise....”**

20. I find and hold that the Grant which was issued to and confirmed to **Esther Njeri Njenga** has become useless and inoperative on account of her demise. The Applicant **Josephine Nduta** not being properly on record as the Administrator of the estate has no ‘locus standi’ to file a summons for confirmation of the Grant. Accordingly acting ‘**suo moto**’ this court hereby **revokes** this certificate of confirmed Grant issued to **Esther Njeri Njenga** on **10<sup>th</sup> November 2010**.

21. Following the said revocation the family is directed to meet and agree on an Administrator to whom a fresh Grant in respect of the estate of the Deceased may be issued. The name(s) of the proposed Administrator(s) to be forwarded to court within **fourteen (14) days**.

22. Finally and in conclusion, this Protest succeeds and the court makes the following orders:-

**(1) The Grant of letters of Administration issued to ESTHER NJERI NJENGA on 23<sup>rd</sup> September 2009 and confirmed on 10<sup>th</sup> November 2010 be and are hereby revoked.**

**(2) The family to forward to court within fourteen (14) days the name(s) of person(s) proposed to be appointed as Administrator(s) of the estate of the Deceased LABAN NJENGA MUNDIA.**

**(3) If the parties are unable to reach agreement, then a fresh Petition for Grant of letters of Administration Intestate to be filed for consideration by the court in the normal manner.**

**(4) This being a family matter I make no orders on costs.**

DATED IN NAIROBI THIS 12<sup>TH</sup> DAY OF NOVEMBER 2021.

.....  
MAUREEN A. ODERO

JUDGE

