



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 1958 OF 1996**

**IN THE MATTER OF THE ESTATE OF HARRISON MBARI WAITHAKA (DECEASED)**

**RULING**

1. A grant of representation to the estate of the deceased herein Harrison Mbari Waitthaka who died intestate on 7<sup>th</sup> September 1995 was made to James Kamau Waitthaka (administrator) and Esther Wambui Mbari (administratrix) on 13<sup>th</sup> November 1996 and subsequently confirmed on 11<sup>th</sup> July 1997. However, the administrator and administratrix herein died on 20<sup>th</sup> September 2005 and 3<sup>rd</sup> May 2009 respectively leaving part of the estate unadministered.

2. As consequence, Grace Njeri Harrison one of the deceased's children and beneficiary of the estate moved this honourable court on 24<sup>th</sup> April 2017 vide a petition for a grant of letters of administration intestate of assets un-administered otherwise known as a grant of letters of administration de bonis non limited only to the part of the un-administered estate.

3. Application is premised on an affidavit in support sworn on the 24<sup>th</sup> April 2017 by Grace Njeri Harrison the applicant herein and a consent signed by the rest of the beneficiaries. In paragraph 7 of the supporting affidavit, the applicant listed three assets out of 18 being part of the estate that has remained unadministered since confirmation of the grant owing to the death of the administrator and administratrix.

4. I have considered the application herein, affidavit in support, consent of the beneficiaries attached thereto plus oral submissions by M/S Mutembei counsel for the applicant. Unfortunately the applicant did not state the specific provision of the succession law under which the application is brought.

5. However, from the wording of the prayer sought, it is apparent that the administration of the estate has not been completed due to the death of the administrator and administratrix. In other words, the grant has become useless and inoperative through subsequent circumstances in accordance with Section 76 (e) of the Law of Succession and paragraphs 16 of the 5<sup>th</sup> Schedule thus calling for revocation or annulment of the grant hence the prayer to replace the same with a grant of letters of administration de bonis non. In the case of **Bin Rashid Bin Salim El-Rumhy v Haider Mohamed Bin Rashid El Basamy(1963)1EA438** the court issued a grant of letters of administration de bonis non after the executor of the Will died before completing the administration of the estate.

6. De bonis non limited grants are therefore issued for purposes of completing administration of the estate in circumstances where the previous administrator has failed to complete the administration of the estate for whatever reason including death. While faced with similar situation, Justice Khamoni reaffirmed this position **In the matter of the estate of Mwangi Mugure alias Elieza Ngware (deceased) and in the matter of the estate of Mary Wairimu Ngware (deceased) Nairobi High court Succession Cause No. 2018 of 2001. The honourable Judge held that:**

**“there was no provision in the law of succession Act for substitution of dead administrators. The proper procedure ought to be an application under Section 76 (e) of the Law of Succession Act, not Section 71 which is on confirmation of grants asking the court to revoke the grant because ‘it has become useless and inoperative through subsequent circumstances’.**

7. In the instant case, the deceased administrator and administratrix having died, the un-administered part of the estate may be rendered to waste unless a replacement of the deceased administrator and administratrix is done. The ends of justice will be met by allowing the application which properly falls within the purview of Section 76 (e) of the Law of Succession Act and Paragraphs 14, 16 and 20 of the 5<sup>th</sup> schedule. Accordingly, application is allowed with orders that a grant of letters of administration de bonis non do issue in place of the one issued on 13<sup>th</sup> November 1996 and subsequently confirmed on 13<sup>th</sup> November 1996 which is hereby revoked.

Order accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 5<sup>TH</sup> DAY OF JULY, 2018.**

**J.N. ONYIEGO (JUDGE)**

In the presence of:

N/A.....Counsel for the Applicant

Edwin.....Court Assistant