



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**SUCCESSION CAUSE NO.606 OF 2006**  
**IN THE MATTER OF THE ESTATE OF ELIZABETH WANJIRU WAWERU - DECEASED**  
**RULING**

By a summons for substitution of a deceased administrator dated 15th January, 2015 and premised under **rule 73** of the **Probate and Administration Rules**, the applicant seek orders:

1. That the Honourable court be pleased to order the deceased administrator herein Joseph Benson Karanja (deceased) replaced and substituted with Wanjiru Karanja
2. That costs be in the cause

The application is based on grounds as seen on the face of the application viz:

1. That Joseph Benson Karanja (deceased) was one of the administrators in this matter alongside Lucy Njoki Njeru.
2. That Joseph Benson Karanja died on 28th July, 2024 and can no longer administer the estate.
3. That Wanjiru Karanja is wife and next of kin of Joseph Benson Karanja and can effectively replace and substitute him as co-administrator of the estate herein alongside Lucy Njoki Njeru.
4. That it is only fair and just that the application be allowed to facilitate the effective administration of the estate and the expedient determination of this matter.

It is further supported by the annexed affidavit of Ochieng Gai Advocate.

The gist of the grounds and the affidavit in support is that Joseph Benson Karanja (deceased) was one of the administrators in this matter alongside Lucy Njoki Njeru. The said Joseph Benson Karanja died on the 28th July, 2014 and can no longer administer the estate. The applicant, Wanjiru Karanja is wife and next of kin of Joseph Benson Karanja and can effectively replace and substitute him as a co-administrator of the estate herein alongside Lucy Njoki Njeru. It is urged that it is only fair and just that the application be allowed to facilitate the effective administration of the estate and the expedient determination of this matter. The court is urged to allow the replacement and substitution as prayed.

Annexed to the affidavit of Ochieng' Gai Advocate is a Death Certificate confirming the death of Joseph Benson Karanja and a certified copy of a Limited grant of letters of administration *ad colligenda bona* in respect of the estate of Joseph Benson Karanja issued to Wanjiru Karanja on 22nd day of October, 2014.

The application is opposed and Lucy Njoki Njeru has filed a replying affidavit sworn on the 16th day of March, 2015. She confirms that a grant of letter of administration over the estate of Elizabeth Wanjiru Waweru (deceased) was made out to Joseph Benson Karanja and herself on 4th December, 2007. She

confirms too that the said Joseph Benson Karanja who was her brother and a beneficiary to the estate of their late mother died on 28th July, 2014. She adds that she is the sole surviving administratrix of the estate of their mother Elizabeth Wanjiru Waweru (deceased).

It is her case that based on advice from her advocate on record, **Sections 58 and 75A** of the **Law of Succession Act** provide for substitution of a deceased administrator in case of a continuing trust. This is for the benefit of minors who cannot receive their portion until they reach the age of majority. She depones that in our instant case, there are no minor beneficiaries. She adds that **Section 81** of the **Law of Succession Act** provides that where one of the administrators of an estate dies, all his powers and duties shall be vested in the surviving administrator. Therefore all the powers of the late Joseph Benson Karanja should be vested on her. The estate is substantially administered and it would not be necessary or economical to have two (2) administrators.

Finally, it is deponed that an application for the appointment of an administrator in the estate of the deceased should be made by the surviving spouse, her beneficiaries, the public trustee or her creditors in that order of priority. The deponent states that Wanjiru Karanja does not fall in any of those categories. In any event, it is urged that **rule 73** of the **Probate and Administration rules** concerns application to ensure the ends of justice are met or the process of court is not abused and the present application does not engage the two factors.

At the hearing, directions were given that the application be disposed off by way of written submissions.

Counsel for the applicant has duly filed submissions. There are no submission on record for the Respondent.

I have had occasion to consider the application, the supporting grounds/affidavit as well as the replying affidavit. I have had regard to the submissions on record.

The undisputed facts are that Joseph Benson Karanja was a co-administrator alongside Lucy Njoki Njeru in respect of the estate of Elizabeth Wanjiru Waweru. Joseph Benson Karanja is since deceased.

Of determination is whether Wanjiru Karanja should substitute Joseph Benson Karanja as a co-administrator in respect of the estate of Elizabeth Wanjiru Waweru.

The law is very clear under the provisions of **Sections 58 and 75A** regarding the substitution of a deceased administrator in the case of a continuing trust. Suffice it to note that the application at hand is not premised under **Sections 58 and 75A** of the Act. The simple explanation would be that those provisions are not relevant to the present application.

Again, it is the Law under **Section 81** of the **Law of Succession Act** that where one of the administrators of an estate dies, all his powers and duties shall be vested in the surviving administrator.

The Applicant has approached this court under **rule 73** of the **Probate and Administration rules**. That rule states:

**“Nothing in these rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”**

In short, the applicant is invoking the inherent powers of this court to ensure the ends of justice are met and the court process is not abused.

A keen look at the history of this matter shows that the respondent has been less than candid in her averments. She has taken refuge in some selected provisions of the law without giving a true account of the history and status of this case so far.

A brief history of the matter reveals that the Respondent was opposed to Joseph Benson Karanja being made a co-administrator. Indeed she applied to have a consent filed making the said Joseph Benson Karanja an administrator set aside. She was overruled by the court and Joseph Benson Karanja was made co-administrator.

It is worth noting that in an earlier affidavit sworn on 23rd September, 2009 at paragraph 7, the respondent deponed that:

**“Due to disagreements in the family, Joseph Benson Karanja was also appointed a co-administrator and he is represented in this matter by the firm of Ochieng Gai & Company Advocates.”**

It is manifestly clear that Joseph Benson Karanja was appointed as an administrator to protect competing interests in this case. Of note is that there is a pending application for confirmation of grant which has elicited affidavits from Lucy and Joseph which are at variance in so far as distribution of the estate is concerned.

Without substitution, one wonders how this cause can move to the next level of hearing based on the pleadings and affidavits filed. This case is a classic example of why **rule 73** of the **Probate and Administration rules** exists. The interests of justice would be jeopardized if substitution was not allowed. There must be substitution to enable articulation of the co-administrator's positions as stated in the pleadings and affidavits filed.

It is in the larger interests of justice therefore that the applicant who is the legal representative of Joseph and who is his wife (thus claiming through him) be substituted in place of the deceased.

It is so ordered.

**Dated, Signed and Delivered at Nakuru this 3rd day of March, 2016**

**A. K. NDUNGU**

**JUDGE**