

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 933 OF 2008

IN THE MATTER OF THE ESTATE OF MBUGUA MUIRURI KARAI DECEASED

RULING

The application dated 28th March 2012 seeks substitution of the respondent in the revocation application dated 6th May 2008. The basis of the application for substitution is that the person named as respondent was the administrator of the estate, he is now dead and he ought to be replaced. The person proposed to take his place is his widow. She did not substitute him as administrator, but is said to be the principal beneficiary following the confirmation of the grant. The applicant in the application dated 28th March 2012 is the applicant in the application dated 6th May 2008.

The complaint in the application dated 6th May 2008 is that the administrators omitted the applicant in that application from the list of survivors. That is why the applicant would like the grant made to the administrators revoked. One administrator is now dead. It is my view that substituting the dead administrator with a person who has not been appointed administrator to take his place will serve no purpose, as the proposed substitute had nothing to do with the process which led to the grant being made to the dead administrator. Parties should understand that probate proceedings are not akin to civil matters. The respondent in a revocation application is usually the holder of the grant sought to be revoked. Such respondent is not in the same footing with a respondent in a civil application. He cannot be replaced in a manner similar to that in civil cases.

The grant sought to be revoked was issued to two persons. The applicant indicates that only one of the administrators is dead. Under *section 82* of the Law of Succession Act upon the death of the one of several administrators all the duties and powers of the administrators vest in the survivor of them. Following the death of Godfrey Waweru Kahihu, all the powers and duties of the administrator now vest in Ndungu Kahihu Muiruri.

As Ndungu Kahihu Muiruri is the remaining respondent in this matter, the application for revocation should proceed with him as sole respondent. There is no basis at all in law to drag the widow of Godfrey Waweru Kahihu, the dead administrator, into this matter. There is no merit in the application dated 28th March 2012. I will dismiss it with costs. The applicant should proceed with the revocation application against the surviving respondent. Costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 10th DAY OF October, 2013.

W. M. MUSYOKA

JUDGE