



REPUBLIC OF KENYA



**In re Estate of Kandie Chemirmir (Deceased) (Succession Cause  
265 of 2012) [2025] KEHC 13431 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13431 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 265 OF 2012  
RN NYAKUNDI, J  
SEPTEMBER 29, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE KANDIE CHEMIRMIR (DECEASED)**

**RULING**

1. What is pending before this court is Summons brought pursuant to section 47 of the [Law of Succession Act](#) and Rules 49 and 73 of the [Law of Succession Act](#) where the Applicant is seeking the following orders;
  - a. Joseph Kipkemoi Kandie be made the sole administrator of the estate of the late Kandie Chemirmir in absence of Tapsimei Kimoi Kandie.
  - b. The said Tapsimei Kimoi Kandie was one of the administrators in respect to the estate of the late Kandie Chemirmir.
  - c. Costs be in the cause.
2. The Application is made on the following grounds on the face of it among others:
  - a. Grant of letters of administration and Certificate of Confirmation was issued to Joseph Kipkemoi Kandie & Tapsimei Kimoi Kandie on 25<sup>th</sup> March 2015.
  - b. The said administrator died before executing transfer forms by way of transfer by transmission.
  - c. The substitution is necessary to facilitate the transfer by way of transmission.
  - d. It in the interest of justice that the application be allowed.
3. The Application is supported by the annexed affidavit dated 30<sup>th</sup> May 2025 in which the Applicant deponed as follows;
  - a. That I am the son of the Late Kandie Chemirmir.
  - b. That upon demise of my father I and my mother Tapsimei Kimoi Kandie now deceased applied for letters of administration and obtained grant of letters of administration and obtained grant of letters of administration and certificate of confirmation of grant to his estate.



- c. That the said Tapsimei Kimoi Kandie died on 14<sup>th</sup> June 2023 before executing transfer forms by way of transfer by transmission distributing the estate.
- d. The said administrator died before executing the transfer forms by way transfer transmission in respect of the estate of the deceased and the substitution is necessary to facilitate the process.

### **Analysis and Determination**

4. I have read and considered the application, the grounds in support and supporting affidavit. There is one issue for determination;

### **Whether the Applicant should be made the sole administrator of the Estate of the deceased?**

5. The Court's supervisory jurisdiction under section 47 of the [Law of Succession Act](#) as read together with Rules 49 and 73 of the Probate and Administration Rules authorises it to make orders to ensure the effective administration of estates and to prevent abuse or defeat of the court's decree. Section 76 of the [Law of Succession Act](#) provides that a Grant may be revoked if the same is found to have become useless and/or inoperative. Where a single Executor/Administrator dies then the grant is rendered both useless and inoperative. This is because a Grant of representation is issued to a particular person or persons. It is given 'in personam' and cannot be transferred to a third party under any circumstances. It would appear that the [Law of Succession Act](#) did not contemplate the death of a single Executor/Administrator to an estate.
6. Section 81 of the [Law of Succession Act](#) deals with a situation where one or more of several administrators passes away. In such a situation the surviving Administrator [s] are mandated to proceed with the administration of the estate to finality. Specifically, section 81 of the [Law of Succession Act](#) provides as follows;
  81. Powers and duties of personal representatives to vest in survivor on death of one of them  
  
Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:  
  
Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.
7. In Re Estate of Mwangi Mugwe Alias Elieza Ngware (Deceased) [2003] eKLR, the Court in considering the situation where the sole Executor/Administrator of an estate had passed away stated as follows: -

“...the operative word is substitution.” The law of Succession has no provision talking about substitution of a deceased single administrator. In the circumstances therefore it is my considered view that the proper provisions of the law to apply is Section 76 (e) of the [Law of](#)



Succession Act and Rule 44 of the Probate and Administration Rules whereby the Applicant would apply for revocation or annulment of a grant on the ground

“that the grant has become useless and inoperative through subsequent circumstances.” The Applicant would proceed to put a prayer in the same application that a new grant be made to him and could as well add a further prayer if need be for confirmation of the new grant. The application should of course, be supported by consent from adult beneficiaries in the estate of the first deceased person, the second deceased person being the deceased administrator.”

8. Similarly, in *Re Estate of George Ragui Karanja (Deceased)* [2016] eKLR, the Court held as follows: -

“The Law of Succession Act does not expressly provide for substitution of personal representatives who die in office, particularly in cases where the estate is left without one. The closest provision is section 81 of the Act which provides for vesting of the powers and duties of personal representatives in the survivor of survivors of a dead personal representative. The provision provides as follows; -

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executor or administrators shall become vested in the survivors or survivor of them provided that, where there has been a grant of letters of administration which involve any continuing trust a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.

It would appear to me that once all the holders of a grant die section 81 of the Act would be of no application. Indeed, the said grant becomes useless and inoperative and liable for revocation under Section 76(e) of the Law of Succession Act to pave way for appointment of new administrators. The appointment of fresh administrators takes the place of the previous ones following their death is subject to the provisions of sections 51 through to section 66 of the Act.”

9. I take note that the death of one or more administrators does not affect the grant, in terms of rendering it invalid or inoperative or useless. Under Section 81 of the Act, the powers and duties of personal representative rest in the surviving personal representative on the death of one of them. Section 76(e) of the Law of Succession Act only applies where there is a sole administrator who then dies.

10. I am in agreement with the above authorities. By plain language of Section 81 of the Law of Succession Act, the powers and duties of co-administrator’s vest in the survivor on the death of one of them. Where there is no continuing trust the survivor may exercise the powers necessary to administer and distribute the estate. It follows that Joseph Kipkemboi Kandie, as the surviving co-administrator, already holds the statutory powers necessary to get in estate assets and to effect transmissions, subject to the terms of the grant. I therefore find merit in this application and grant the following orders;

- a. That Joseph Kipkemboi Kandie be and is hereby recognized and declared as the surviving Administrator of the Estate of the late Kandie Chemirmir.
- b. That the said Joseph Kipkemboi Kandie is authorised in that capacity to sign, execute and deliver all necessary documents, transfer forms, declarations and any other instruments required to effect transmission of estate land and other estate assets to the persons lawfully entitled under the grant and the certificate of confirmation.



- c. That the authority granted by this order in (b) above is without prejudice to any further directions the Court may give if the circumstances change.
- d. That there shall be no order as to the costs.
- e. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT ELDORET THIS 29<sup>TH</sup> DAY OF SEPTEMBER 2025**

.....

**R. NYAKUNDI**

**JUDGE**

