



REPUBLIC OF KENYA



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In re Estate of Patency Jemitei Kandie (Deceased) (Succession Cause 153 of 2013) [2025] KEHC 14957 (KLR) (23 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14957 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 153 OF 2013
RN NYAKUNDI, J
OCTOBER 23, 2025
IN THE MATTER OF THE ESTATE OF THE
LATE PATENCY JEMITEI KANDIE (DECEASED)**

**IN THE MATTER OF
KIPNGETICH KIPSANG PETITIONER**

RULING

1. What is pending before this Honourable Court is Summon for Revocation of Grant dated 16th September 2025 brought pursuant to sections 76 (e) & 81 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules in which the Applicant/Petitioner is seeking the following orders: -
 - a. Spent
 - b. That this Honourable Court be pleased to revoke the grant issued to Wilson Kipsang Cheboiwo on 6th December, 2013 on grounds that it has become useless and inoperative through subsequent circumstances.
 - c. That this Honourable Court be pleased to appoint Kipngetich Kipsang so applying, as the administrator of the estate of the late Patency Jemitei Kandie (Deceased).
2. The summons is made on the following grounds;
 - a. That the said Wilson Kipsang Cheboiwo who was issued with the letters of administration of the estate of Patency Jemitei Kandie (Deceased) who died on the 17th July 2010 at Kipsomba, also died on 1st August 2022.
 - b. That at the time of his demise, the said Wilson Kipsan Cheboiwo had not distributed the estate of Patency Jemitei Kandie (Deceased) hence need to substitute him with another administrator entitled in equality.



3. The Summons is supported by the annexed affidavit dated 16th September 2025 sworn by Kipngetich Kipsang who deponed as follows: -
- a. That I am the biological son of the late Patency Jemitei Kandie (Deceased) who died on the 17th July 2010 at Kipsomba.
 - b. That my father Wilson Kipsang Cheboiwo filed a petition vide Eldoret High Court Succession Cause No. 153 of 2013 and was issued with letters of administration intestate in the 6th December 2013.
 - c. That my father Wilson Kipsang Cheboiwo unfortunately passed away on 1st August 2022 before the distribution of the estate.
 - d. That I have been permitted by my siblings to apply to be appointed as the administrator for the estate of our late mother Patency Jemitei Kandie (deceased).
 - e. That I will accordingly administer the estate in accordance with the law.
 - f. That owing to the demise of the erstwhile administrator, it is now imperative that we have someone else to substitute.

Analysis and Determination

4. I have read and considered the summons, the grounds and the affidavit in support of the same. There is one sole issue for determination by this Honourable Court;

Whether the Summons of revocation of Grant is merited within the meaning of section 76 of the [Law of Succession Act](#)?

5. The law relating to Revocation of Grants is provided for in Rule 44 of the Probate and Administration as read with section 76 of the [Law of Succession Act](#) which states as follows: -

76. Revocation or annulment of grant

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—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e)



and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

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

6. Section 76 of the *Law of Succession Act* was clearly expounded on In re Estate of Prisca Ong'ayo Nande (Deceased) [2020] eKLR where it was stated that: -

“Under section 76, a Court may revoke a grant so long as the grounds listed above are disclosed, either on its own motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the Applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”

7. In my considered view, Revocation of grant is an ultimate tool where it is apparently demonstrated that the Administrators can no longer be allowed to be. This Court can, even where a Revocation would be allowed, give directions to conclude distribution as a catalyst of conclusion. In the case of Albert Imbuga Kisigwa v Recho Kawai Kisigwa [2000] eKLR it was held that;

“Power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. It is not discretion to be exercised whimsically or capriciously. There must be evidence of wrong doing for the court to invoke section 76 and order to revoke or annul a grant. And when a court is called upon to exercise this discretion, it must take into account interests of all beneficiaries entitled to the deceased's estate and ensure that the action taken will be for the interest of justice.”

8. The Court must decide whether the grant has become useless and inoperative. Where a sole administrator dies leaving no one to carry on or where a grantee is incapacitated or otherwise unable or unwilling to proceed with administration, the grant may fairly be said to have become inoperative in the sense that the statutory purpose, orderly collection, preservation and distribution of estate assets cannot be achieved without further Court intervention. The Applicant's unchallenged averment that the estate remains un-administered at the date of the filing of this Summons and that the former administrator is deceased directly engages the statutory ground in section 76(e).

9. Moreover, I would like to invoke section 81 of the *Law of Succession Act* which 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.

10. 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.”

11. 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.”



12. The material facts before the record of the court file are not in dispute. The Grant was issued to Wilson Kipsang Cheboiwo on 6th December 2013. He has since died. The Applicant swears that at the time of his death the estate had not been administered to completion and that there is therefore an urgent need for a new administrator to be appointed so that the administration is carried forward. The Applicant further places before the Court a consent to the making of a new grant dated 4th September 2025 signed by all beneficiaries, a factor which the Court treats as a strong indicium of unity and absence of opposition to the proposed substitution. The Applicant has also placed a burial permit showing death of the former administrator before the Court which is adequate for present purposes to show that the erstwhile administrator is deceased.
13. Where revocation is appropriate, the Court has broad discretion to appoint a new administrator. In exercising that discretion the Court will consider (a) the wishes of beneficiaries, (b) the suitability and willingness of the proposed administrator, (c) whether the proposed appointment will expedite administration and protect the estate and (d) any risk of prejudice to parties. Here, the beneficiaries have provided a written consent dated 4th September 2025 to the making of a grant to the Applicant and the Applicant avers that he has the consent of his siblings to apply. The Court accepts the consent as a compelling reason to appoint the Applicant herein there being no opposition.
14. For the reasons set out above, the Court finds that the grant made to Wilson Kipsang Cheboiwo has by reason of subsequent events of the death of the Administrator herein and the unfinished administration, become useless and inoperative within the meaning of section 76(e) of the *Law of Succession Act* and that it is appropriate in the interests of justice and for the proper administration of the estate to revoke the old grant and to appoint the Applicant as administrator. Accordingly, the Summons for Revocation of Grant dated 16th September 2025 is allowed as follows;
 - a. That the Grant of Letters of Administration intestate issued to Wilson Kipsang Cheboiwo on 6th December 2013 in Succession Cause No. 153 of 2013 be and is hereby revoked and annulled in so far as it remains unexecuted and inoperative following the death of the sole Administrator therein. The revocation is made pursuant to section 76(e) of the *Law of Succession Act*.
 - b. That Kipngetich Kipsang be and is hereby appointed as the Administrator of the intestate estate of the late Patency Jemitei Kandie for the purposes of completing administration, collection of assets, preservation of estate property, payment of liabilities and distribution in accordance with law. The Appointment is pursuant to section 66 of the *Law of Succession Act* as read with Rule 73(1) of the Probate and Administration Rules.
 - c. The new Administrator shall within sixty (60) days of this Ruling complete the transmission of the estate and to produce to the court a full and accurate account of the completed administration within the confines of section 83 of the *Law of Succession Act*.
 - d. There shall be a Status Conference on 16th December 2025 to confirm compliance with the aforementioned orders above.
 - e. Costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET ON THIS 23RD DAY OF OCTOBER 2025

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R. NYAKUNDI
JUDGE

