

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**(FAMILY DIVISION)**  
**P&A NO 173 OF 1990**  
**IN THE MATTER OF THE ESTATE OF GENYA NDORE (DECEASED)**

**RULING**

1. The applicant, Mongoti Genya Mongoti, filed an application dated **24<sup>th</sup> April 2025**, vide which he sought to substitute Jefwa Genya Ndore as the administrator of the estate of the deceased, and that a new grant be issued to him and thereafter be confirmed.
2. His grounds of doing so were that **Jefwa Ngenya Ndore** died on **4<sup>th</sup> June 1994**, before he could fully administer the estate. He averred that he and his siblings had agreed and that it would be just and expedient for the said prayers to issue. He attached a signed consent form from 7 beneficiaries in support of the application.
3. The application was opposed by **Trevor Amani Jefwa, Mwango Jefwa Genya, Kiti Jefwa, Jackson Jefwa, Baraka Jefwa**, and Mwanahamisi Jefwa, who contended that under judge-made law, a deceased administrator could not be substituted.
4. Faced with the objection, the applicant withdrew the application vide a Notice of Withdrawal dated **5<sup>th</sup> June 2025**. This Court adopted the said withdrawal on **15<sup>th</sup> July 2025**.

5. The applicant thereafter filed a chamber summons dated **5<sup>th</sup> June 2025** seeking to have the grant issued to Jefwa Genya Ndore on **14<sup>th</sup> May 1992** and confirmed on **5<sup>th</sup> March 1993** be revoked on the grounds that the same had become useless and inoperative on account of the death of the administrator and that a new grant be issued to **Mongoti Genya Mongoti**.
6. The application was opposed. The respondents filed a replying affidavit. In response, the applicant filed a Supplementary affidavit sworn on **25<sup>th</sup> July 2025**.
7. The application was canvassed by way of written submissions.
8. The submissions of the applicant are dated **11<sup>th</sup> August 2025**. The applicant urged that he was the deceased's son. The previous administrator was his brother. It was submitted that the respondents are the deceased's grandchildren and, as such, do not have precedence.
9. Counsel for the applicant urged that upon the death of the administrator, the grant became useless and inoperative. The Court should therefore issue a *grant de bonis non* to him, as he had the blessings of his siblings.
10. Regarding the distribution of the estate, he prayed that it be done in accordance with section 38 of the Law of Succession Act.
11. Counsel for the applicant prayed that the orders be issued as prayed to avoid wastage of the estate.

12. The submissions of the respondents, on the other hand, are dated **29<sup>th</sup> August 2025**. The respondents opposed the application on the grounds that the estate of Genya Ndore Msodo (deceased) comprised one asset, Title No. Kilifi/Mtwapa/1126, which it had been agreed would be inherited by Jefwa Genya Ndore (deceased), who was then the administrator.
13. It was submitted that there had never been any issues. The respondents urged that they had a problem with the appointment of the applicant as the sole administrator and proposed that the 2<sup>nd</sup> Respondent be appointed as the co-administrator.
14. They contended that, being children of the deceased, whose father had died, they qualified to be the beneficiaries of the deceased. They stated they were agreeable to the estate being distributed to all beneficiaries, but did not trust the applicant to serve as the sole administrator.
15. It was urged that under section 66 of the Law of Succession Act, this Court had the discretion on who to appoint as an administrator. Reliance was placed on the case of **re Estate of JMW (deceased) [2017] KEHC 6100 (KLR)** and **re Estate of Charles Muritu Gacheru [2022] KEHC 15758 (KLR)**.
16. I have considered that application and the response thereto. It is common ground that the administrator of the estate is deceased and that he died before fully administering the estate.

17. The grant that was issued on **14<sup>th</sup> May 1992**, Jefwa Genya Ndore, was confirmed on **5<sup>th</sup> March 1993**. The copy of the certificate of Confirmation of Grant in the Court file does not say what the estate comprised or how it would be divided.

18. Section 76 of the Law of Succession Act provides that: -

**“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 may 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.”

19. The parties agree that Jefwa Genya Ndore is now deceased and that the respondents are his children. The effect of the previous administrator's demise is that the grant became useless and inoperative. I am guided by the persuasive authority of the decision of Musyoka J **in re Estate of Prisca Ong'ayo Nande (Deceased) [2020] KEHC 6553 (KLR)**, where the Court held that:-

“8. 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.” (emphasis added).

20. Since the administrator died before he could fully administer the estate, the grant issued to him became useless and inoperative. What the Court should do then is to issue **letters of administration de bonis non administratis** so that the remainder of the estate could be distributed.
21. In re Estate of Ngaigwo M’Shomba [2020]eKLR, it was held that:-  
“Where a single administrator or executor dies before completion of succession proceedings, the appropriate directions to take are for the applicant to apply for a grant of letters of administration de bonis non. This can only be done by revoking the grant under section 76(e) and Rule 44 of the Probate & Administration Rules and Paragraph 16 of the 5<sup>th</sup> schedule. Technically or legally, the grant has become useless and inoperative.”

22. A similar holding was made in the case of **Julia Mutune M'mboroki v John Mugambi M'mboroki, Gikundi M'mboroki, Linet Nthiori Ndingu & Naomi Gatimba [2016] KEHC 7023 (KLR)**. In this case, Gikonyo, J, had the following to say:-

“In my view, therefore, where the sole administrator is a natural person, and he or she dies, the grant becomes useless or inoperative by reason of subsequent event of his demise. I am aware that the Law of Succession Act does not define or say what constitutes *“the grant has become useless and inoperative through subsequent circumstances”*. But, in my opinion, death of an Administrator would be a sufficient reason to revoke a Grant for having become useless and inoperative due to subsequent demise of its holder. Accordingly, in such case, the proper procedure is to apply for revocation of grant of letters of administration under section 76(e) of the Law of Succession Act on the reason *that the grant has become useless and inoperative through subsequent circumstances*, and a grant to be made to another person named in the application.”

23. Who then should be appointed as the administrators? It is clear that the applicant and the respondent do not see eye to eye regarding the administration of the estate. In my view, this Court ought to exercise its discretion under section 66 of the Law of Succession Act.

24. Section 66 of the Law of Succession Act provides that: -

**“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference –**

- (a) surviving spouse or spouses, with or without association of other beneficiaries;**
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;**
- (c) the Public Trustee; and**
- (d) creditors: Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will. “**

**25.** In the case of *re Estate of JMW (deceased) [2017]KEHC 6100(KLR)*, it was held that:-

***“As clearly stated in section 66 of the Law of Succession Act, the ultimate decision in the appointment of an administrator is squarely with the Court. The Court must be extra careful and cautious in the appointment of administrators of an estate who will not waste, damage, or destroy, and generally not interfere with the entire estate. The Court must ensure that the best interest of the estate is taken care of...”***

**26.** As the children of the deceased administrator, the respondents are entitled to step into the shoes of their father. This is my understanding of the decision

of Musyoka J in the case of **re Estate of Veronica Njoki Wakagoto (deceased) [2013]eKLR** and Matheka, J in **re Estate of Florence Mukai Kinya (deceased) [2018]eKLR**. To do so, however, they must have a grant of letters of administration over their parents' estate.

27. The reason for the foregoing was given succinctly by E Muriithi, J in **In re Estate of Mwaniki Kibara (Deceased) [2025] KEHC 15591 (KLR)** where he stated that: -

**“6. However, this Court takes the view that for good order and so that the Court is confident that the applicant grandchildren who seek to pursue, secure and inherit the share going to their deceased parent with the authority of any other children of the deceased parent, the grant of letters of administration to the estate of their deceased parent is essential.”**

28. The respondent has not shown that they have a grant in respect of their father's estate. Thus, despite the fact that I would have been happy to have the 2nd respondent as a co-administrator, I am unable to do so.

29. In the circumstances of this case, I revoke the grant issued to Jefwa Genya Ndore on **14<sup>th</sup> May 1992**, for having become useless and inoperative on account of his death. I issue a **grant de bonis non administratis** to **Mongoti Genya Mongoti**. I direct that the said administrator file a summons for confirmation of the grant within 60 days. The said summons must include a distribution schedule showing how the estate shall be distributed and should ring fence the share of the estate of **Jefwa Genya Ndore** so that the respondents are not disinherited.

**30.** This is a succession dispute between close family members. An order of costs will not be helpful and shall not restore broken family ties. Each party will therefore bear its own costs of the application.

**31.** It is so ordered.

**Dated** and signed this **7<sup>th</sup>** day of **November 2025**. Delivered virtually through Microsoft TEAMS.

**Gregory Mutai**  
**JUDGE**

In the presence of:-  
Ms Mwangi, for the Applicant;  
No appearance for the Respondents; and  
Arthur – Court Assistant.