



**In re Estate of Chemiati (Deceased) (Miscellaneous Succession Cause
38 of 1994) [2026] KEHC 3057 (KLR) (6 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3057 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS SUCCESSION CAUSE 38 OF 1994
REA OUGO, J
MARCH 6, 2026
IN THE MATTER OF THE ESTATE OF SILA CHEMIATI (DECEASED)**

BETWEEN

RAMADHAN MUSUMBA CHEMIATI APPLICANT

AND

HADIJA NANJALA CHEMIATI (DECEASED) 1ST ADMINISTRATOR

JAMIN WASIKE CHEMIATI 2ND ADMINISTRATOR

RULING

1. There are two Applications before the court for determination. The first application before the court is a notice of motion dated 4th February 2023, premised on Order 24 Rule 3 of the Civil Procedure Rules 2010, filed by Agnes Nakhumicha Wasike. It seeks the following orders:
 - a. That Agnes Nakhumicha Wasike Be Substituted In Place Of Jamin Wasike Chemiati (deceased).
 - b. Costs.
2. The primary ground of the application is that the applicant is the widow of the deceased administrator, who died on 21st March 2015 and was eager to proceed with the case.
3. In response to the Application, Ramadhan Musumba filed a Replying Affidavit dated 9th June 2023, in which he opposed the Application and averred that the two administrators, Hadija Chemiati and Jamin Wasike, were his mother and step-brother, respectively, who are now deceased on 15th February 2012 and 21st March 2015, respectively. He stated that the Grant issued to the two administrators is now obsolete and inoperative, and that no other Grant can be lawfully issued while the current one remains in force. He further averred that the Applicant is not only a stranger but also approached the court in an irregular manner, as she does not possess any Grant appointing her as the administrator



- of the estate of the late Jamin Wasike. He asserted that the Applicant lacks the authority to perform the duties she seeks through the purported Application and that her application should therefore be dismissed.
4. The second Application is a Chamber Summons based on Section 76 (d) (ii) and (e) and Rule 44 of the Probate and Administration Rules, dated 21st December 2023. The Applicant, Ramadhan Musumba, requests the following prayers:
 1. Spent
 2. The Grant of Representation herein made to Jamin Wasike Chemiati And Hadija Nanjala Chemiati to administer the Estate of the deceased herein be and is hereby revoked for the purpose of their replacement since both are now deceased persons.
 3. The Applicant, Ramadhan Musumba Chemiati be and is hereby appointed in substitution of both administrators and accordingly reissued with the Grant.
 4. The costs of this Application be borne by the Estate.
 5. The Application is supported by the Supporting Affidavit sworn by the Applicant on the same dates and based on the following grounds: -
 - a. The death of the said administrators has rendered the Grant inoperative and useless.
 - b. The family has settled on the Applicant Ramadhan Musumba Chemiati to be appointed to replace the deceased administrators.
 - c. The re-issuance of the Grant to the Applicant is important to enable him collect, protect and preserve the assets of the Estate of the deceased, pending conclusion of the cause.
 - d. In the interests of justice.
 6. The Applicant states in his supporting affidavit that the estate involved in this case belonged to his deceased father. The two administrators have since died (death certificates marked RMC -1a and b), making the grant invalid and only suitable for revocation. He explains that unresolved issues are causing delays in distributing the estate. He further states that the family agreed he should take responsibility and proceed with administering and ultimately distributing the estate (consent marked RMC-2). Additionally, he obtained a Grant ad Litem (Grant marked RMC-3) for the estate of Hadija Nanjala after her death. His position is that he intends to distribute the estate legally in accordance with the law and to provide a proper account if required.
 7. In response to the Application, Agnes Nakhumicha Wasike filed a Replying Affidavit dated 11th March 2024, vehemently opposing the Application and describing it as frivolous, vexatious, and an abuse of the court's due process. She states that she was the widow of one of the administrators, Jamin Wasike Chemiati, and had been issued a letter by the area chief to enable her to obtain her late husband's death certificate. She further states that she approached the Court via an Application dated 4th February 2023 [marked ANW-II(a)] and that a Ruling was delivered on 29th November 2023 by this Court [marked ANW II (b)] setting aside the Orders requiring her to substitute her husband in the succession cause. She also states in the said Affidavit that the Applicant had no right to replace her late husband, but he could instead proceed to replace his late mother. She argues that the consent he relied on did not include any representation from her late husband's family, who belonged to the 1st House. She asserts that the limited Grant attached to the Application was irrelevant to the orders sought and that the Applicant was not keen for this case to be concluded because he was deriving rent from the business premises within the centre of Bungoma township. It is her argument that she would suffer



irreparable harm if the orders sought were not granted, as it would result in her being automatically disinherited as the widow of the co-administrator from the first house to which her husband belonged.

8. The two applications were presented via viva voce evidence, and the parties were directed to also file witness statements and any other supporting documents. At the conclusion of the hearing, the parties were instructed to submit written submissions, which are now on record.

The 1st Applicant's/respondent's /agnes Nakhumicha Wasike's Submissions

9. Counsel submitted that the only issue for determination was who should replace the deceased administrators. It was argued that the Respondent's (Ramadhan Musumba) claim that his brother Jamin Wasike was not married to the Applicant Agnes Nakhumicha was merely an oral allegation without supporting evidence, and that her absence from the late Sila Chemiati's (her father-in-law) funeral did not affect her marital status with the late Jamin Wasike. Counsel further submitted that only Agnes Nakhumicha presented evidence of the chief's letter confirming her marital status to the late Jamin Wasike, along with the dowry agreement produced by RW3 David Tindi Wanyama, dated 8th April 1968, which remained unchallenged.
10. Counsel cited Sections 107(1) and 109 of the *Evidence Act* in support of the above position and further submitted that it would be unfair and unconscionable to exclude the late Jamin Wasike's wife from the proceedings, which would effectively mean there is no representation from the first household of the deceased Sila Chemiati.
11. On the issue of the Grant ad Litem, Counsel cited the case of In Re Estate of Ashford Miriti (Deceased) [2021] eKLR, where the Court at paragraph 5 quoted the case of Re Estate of Helena Wangechi Njoroge (Deceased) [2015] eKLR, stating that a grant of representation was only necessary to file a civil suit to protect or defend the estate of a deceased person against third parties. Counsel submitted that the issue of the Applicant's failure to apply for a limited grant was irrelevant to the present proceedings and that even if the Objector/Respondent/2nd Applicant took out a grant ad litem over his late mother's estate in order to seek to be the administrator in this case, that did not confer any advantage over him. They urged the court to allow the application.

The 2nd Applicant's/respondent's/ramadhan Musumba's Submissions

12. Counsel submitted written submissions dated 3rd October 2025, stating that the Applicant Ramadhan acknowledged the late Jamin Wasike as his brother. However, they did not recognise or know the said Agnes Wasike or her children, and therefore, they were strangers to the family of the deceased Sila Chemiati and the clan from which they claimed to originate. Consequently, she could not be appointed as an administrator of the estate of the late Sila Chemiati, and even if she were appointed, she should have obtained a limited grant to establish her case.
13. Regarding the second issue concerning the Application for revocation of the Grant, counsel submitted that Section 47 of the *Law of Succession Act* was not meant to be complicated to prevent the deceased's family from experiencing unnecessary frustration while the succession process was still ongoing. The case of In the Matter of the Estate of Mwangi Mugwe alias Elieza Ngware (Deceased) (2003) KEHC 872 (KLR) was cited, where the court outlined the procedure to follow when a grant becomes inoperative upon the death of the administrator(s), and the case of Re Estate George Ragui Karanja (Deceased) (2016) KEHC 6519 (KLR), where Musyoka J. clarified the issue of substituting personal representatives who have died in office and the application of Section 81 of the Act.
14. Counsel submitted that, in a situation where all the administrators have died, Section 81 would not apply in this case because the grant would become useless and inoperative, making it liable for



revocation under Section 76 (e) of the Act. This would necessitate appointing new administrators to replace the previous ones. They urged the court to grant the prayers for revoking the grant, issuing the grant to Ramadhan Musumba, and dismissing the Respondent/1st Applicant's request to substitute the deceased administrator Jamin Wasike.

Analysis And Determination

15. I have considered the two applications before me, including the oral and documentary evidence presented by the parties in court and their respective submissions on the law. The primary issue for my determination is whether the application dated 4th February 2023 filed by Agnes Nakhumicha Wasike and the application dated 21st December 2023 filed by Ramadhan Musumba Chemiati are justified and should be granted.
16. The main question for the court is whether the parties in these Applications could be allowed to substitute the deceased administrators.
17. The Applicant in the first Application, Agnes Nakhumicha, requests a substitution of her late husband Jamin Wasike Chemiati as a co-administrator of the Estate of the late Sila Chemiati. It is argued by the Respondent, Ramadhan Musumba, that although they acknowledged Jamin as her brother, they were strangers to Agnes and her children.
18. In her evidence in chief, Agnes Nakhumicha (RW1) adopted her witness statement dated 16th April 2024 and stated that she was married to the late Jamin Wasike in 1965 and that they lived together in Bungoma Township at her father-in-law's homestead, parcel No. East Bukusu/South Kanduyi/489. She testified that the marriage was solemnised on 8th April 1968 when dowry was paid in accordance with Bukusu customary laws, and they were thereafter blessed with 13 children, four of whom have since died.
19. This evidence was further supported by RW2 David Tindi Wanyama, the Applicant's younger brother, who testified that dowry was paid on 8th April 1968 by the late Mzee Sila Chemiati and presented the dowry agreement dated 8th April 1968. I note that none of these documents were ever challenged by the Respondents in court.
20. At the same time, I am cognizant that the late Jamin was recognised as the son of the late Sila Chemiati from the first household. No other surviving beneficiaries, such as his mother or other siblings from that household, have been listed in this case. It is therefore reasonable to assume that he was appointed as an administrator, representing himself as the sole surviving beneficiary of the first household. Consequently, since he died while serving as an administrator, his estate was still entitled to a share of his late father's estate. Based on this premise, the applicant, his widow Agnes Nakhumicha, has approached the court in this application seeking to substitute him as an administrator on behalf of the first household.
21. My analysis of the above evidence is that the 1st Applicant was vested with the proper authority to represent her deceased husband in the succession cause. There was no evidence contradicting her marital relationship to the said Jamin Wasike, who was one of the administrators and a son of the deceased from the 1st house, and she could not simply be dismissed as his wife. I find that she had the proper locus standi to bring the matter before the court on behalf of her deceased husband.
22. I will therefore consider whether she has properly moved the Court. In line with this, I will also consider the prayers of the Applicant in the second Application, Ramadhan Musumba. He seeks to have the existing Grant revoked and to be appointed in place of the two households as a son and brother of the two deceased administrators.



23. I have considered the provisions of Section 76 of the *Law of Succession Act* on Revocation of Grant 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.

24. The Applicant in the 2nd Application stated that because the two administrators had died, the Grant issued to them had become invalid and inoperative. For this reason, he requested its revocation.

25. It is well known that a Grant is personal in nature since it grants an administrator or personal representative the authority that the deceased person would have exercised if they were still alive. Therefore, it cannot be transferred to another beneficiary to assume or substitute as requested by the Applicant in the 1st Application. In other words, there is no explicit legal provision addressing substitution, except under the circumstances of Section 81, which states 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.

26. The import of the above is that the duties of a deceased administrator pass to a surviving co-administrator unless, in cases of a continuing trust with only one surviving administrator, where the court may issue further orders in that regard. The scenario described does not apply to the present facts



of this case, as the two administrators to whom the Grant was issued have since died. In my view, the question of substitution does not therefore arise.

27. Having outlined this, it follows that the Court can only determine whether the current Grant is effective in administering the estate of the late Sila Chemiati, since a new Grant cannot be issued while the existing one remains in force. I find that, since the Grant was issued to two administrators who are now deceased, Section 76 (e) may be invoked based on the current circumstances. I also find that the Applicant's assertion that the Grant has become inoperative is proper because, as a Grant is issued in personam and both administrators are now dead, it would be appropriate for the beneficiaries to propose new administrators and to apply to the Court for a new Grant.

28. I support this finding by relying on the Court of Appeal's decision in *John Karumwa Maina vs. Susan Wanjiru Mwangi* [2015] eKLR, which stated as follows: -

“In the case of *Florence Okutu Nandwa and Another vs. John Atembakojwa*, Court of Appeal Civil Appeal in Civil Appeal No. 306 of 1998 at Kisumu where it was held that a court should not issue a grant to a person who has not sought for it. The judge stated as follows:-

“A grant of representation is made in personam. It is specific to the person appointed. It is not transferable to another person. It cannot, therefore, be transferred from one person to another.

The issue of substitution of an administrator with another person should not arise. Where the holder of a grant dies, the grant made to him becomes useless and inoperative, and the grant exists for the purpose only of being revoked. Such grant is revocable under Section 76 of the *Law of Succession Act*. Upon its revocation, a fresh application for a grant should be made in the usual way, following procedures laid down in the *Law of Succession Act* and the Probate and Administration (Rules). I agree with the respondent that there cannot be a substitution of the dead administrator by his wife in the manner proposed by the applicant.”

29. Similarly, in *Julia Mutune M'mborok vs. John Mugambi M'mboroki & 3 Others* (2016) KLR the court held as follows:-

“a. There is absolutely no room of substitution of the deceased administrator under the *Law of Succession Act*. 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.

b. 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.”

30. Based on the above authorities, it is my conclusion that the 2nd Applicant, Ramadhan Musumba, has established a valid case for the revocation of the Grant issued to his late mother, Hadijah Nanjala, and his late step-brother, Jamin Wasike. Therefore, I hereby revoke the said Grant.

31. I find that the 1st Applicant's prayer to substitute her deceased husband as an administrator cannot stand simply because the same is unfounded in law. As a result, her Application for substitution is unmerited and hereby fails.



32. However, the Court recognises the need for representation from the 1st household, since her late husband was the sole representative of that household. In this regard, I find that it will serve the interests of justice for the Applicant in the 1st Household to be appointed as a co-administrator alongside the Applicant in the 2nd Household to ensure proper and fair administration of the Estate for both households. The two parties must, however, submit a new Application for Grant as required by the *Law of Succession Act* and the Probate and Administration (Rules).
33. In the final analysis, the court finds and holds as follows: -
- a. That the Application dated 4th February 2023 filed by Agnes Nakhumicha Wasike lacks merit and is hereby dismissed.
 - b. That the Application dated 21st December 2023 filed by Ramadhan Musumba Chemiati is merited and is allowed to the following extent:
 - i. That the Grant of Representation issued to Jamin Wasike Chemiati and Hadijah Nanjala Chemiati be and is hereby revoked under Section 76(e) of the *Law of Succession Act*.
 - ii. That a fresh Application for issuance of Grant of Representation over the Estate of late Sila Chemiati be made by a representative from the 1st and 2nd Household of the deceased.
 - c. There shall be no orders as to costs.
34. Those are the Orders of the Court.

DATED AND DELIVERED AT BUNGOMA ON THIS 6TH DAY OF MARCH 2026.

R.E. OUGO

JUDGE

In the presence of:

Mr. Makori for Agnes Wasike / Applicant

Ramadhan Musumba Chemiati

Brenda - C/A

