



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

HIGH COURT PROBATE & ADMINISTRATION CASE NO. 8 OF 2023

IN THE MATTER OF THE ESTATE OF IGNATIUS NDIRANGU KAMAU-DECEASED

BETWEEN

ZACHARY NGANYE NDIRANGU.....2ND ADMINISTRATOR/APPLICANT

AND

PETER NDIRANGU KAMAU.....1ST ADMINISTRATOR/RESPONDENT

RULING

1. Zachary Nganye Ndirangu, the applicant herein, moved the court by way of Summons dated 12th November, 2024, under sections 47 & 83 (f) of the Law of Succession Act and under Rules 40, 49 & 73 of the Probate and Administration Rules. He is seeking the following orders:
 - a) The 2nd administrator/applicant be authorized to solely execute all necessary documents to facilitate the subdivision and transfer of all the land parcels comprising the deceased's estate in accordance with the certificate of confirmation of grant dated 28th May, 2024, in view of the 1st administrator's/respondents' default to execute the same.
 - b) The Sub-County Surveyor, Nyandarua South, be authorized to undertake the subdivision of the land parcels comprising the deceased's estate in accordance with the certificate of confirmation of grant dated 28th May, 2024.
 - c) The OCS, Kipipiri Police Station and the Deputy County Commissioner, Kipipiri Sub-County, be authorized to provide security during the survey exercise.
 - d) The County Land Registrar, Nyandarua, be authorized to dispense with the production of the original title deeds for the aforesaid land parcels during the process of subdivision and distribution of the deceased's estate.
 - e) The costs of this application be provided for.

2. The application was premised on the following grounds:

- a) This Honourable court delivered its judgment on 11th June 2020, ordering the distribution of the deceased's estate.
- b) The initial certificate of confirmation of grant was issued on 11th June 2020 in terms of the judgment.
- c) On 5th November 2020, the respondent filed a summons dated 5th November 2020 seeking a stay of execution of the judgment and orders of 11th June 2020 pending appeal.
- d) The applicant filed a preliminary objection to the said application on 9th November 2020.
- e) A ruling on the said application was delivered on 27th January, 2022, upholding the preliminary objection.
- f) The respondent's brother, one David Macharia Ndirangu, filed yet another application dated 27th July 2022 seeking inter alia for this honourable court to set aside, review or vacate the orders of 11th June 2020 pursuant to which the certificate of confirmation of grant was issued.
- g) The said application was dismissed in a ruling delivered on 24th April, 2024.
- h) The respondent then filed an application in the Court of Appeal seeking to be substituted in place of his late mother, one Josephine Wamwathi, as the appellant in Nakuru Court of Appeal Civil Appeal No. E068 of 2020.
- i) The said application was heard and dismissed in a ruling delivered on 27th September 2024 by the said court, and the appeal was declared to have abated.
- j) In view of the foregoing facts, unless the orders sought herein are granted, the respondent will not co-operate in the distribution of the estate despite there being no pending appeal against the judgment of this honourable court.
- k) It is therefore fair to grant the orders sought herein to enable the distribution of the deceased's estate.

3. The respondent opposed the application and filed the following grounds:

- a) By virtue of being the deceased's son and administrator representing the interest of the 2nd house.
- b) He filed an application seeking to be substituted in place of my late mother, which application was dismissed vide a ruling delivered on 27th September, 2024.
- c) If this application is allowed, the 2nd house shall suffer substantial loss as my application in the court of appeal shall be rendered nugatory.
- d) This application is premature.

4. There is a misconception that when one of the administrators passes away, there must be a substitution. Section 81 of the Law of Succession Act provides:

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 involves 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.

5. The legal position is very clear regarding the consequences when one or more of the several executors or administrators to whom a grant of representation has been made die. All powers and duties of the executors or administrators are vested in the surviving executor or administrator. The only exception is in a continuing trust. This is not the case in this matter. **In re Estate of George Ragui Karanja (Deceased) [2016] eKLR**, Musyoka J. held:

The Law of Succession Act does not expressly provide for the 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 or survivors of a dead personal representative...

6. In the instant case, the application is allowed. Since this is a family matter, each party will bear its own costs.

Delivered and signed at Nyandarua, this 18th day of March 2026

KIARIE WAWERU KIARIE

JUDGE