

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**SUCCESSION CAUSE NO. 306 OF 2001**

**IN THE MATTER OF THE ESTATE OF HARUN GACHIENGO KAMAU**  
**(DECEASED)**

**NAOMI WAMBUI GACHIENGO.....1<sup>ST</sup> RESPONDENT/ADMINISTRATOR**

**RAHAB WANGARI GACHIENGO.....ADMINISTRATOR (DECEASED)**

**AND**

**DANIEL KAMANJA GACHIENGO.....APPLICANT/PROPOSED  
ADMINISTRATOR**

**RULING**

1. What is for determination before this Court are two applications. The First is a Notice of Motion dated 21<sup>st</sup> February, 2025, filed by the Applicant/Proposed Administrator (**Daniel Kamanja Gichengo**) and brought under Section 66 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, seeking Orders:-

***1) THAT this Honourable Court be pleased to appoint Daniel Kamanja Gachiengo as an additional administrator of the Estate of the deceased.***

***2) THAT the Grant of Representation to the Estate of Harun Gachiengo Kamau(Deceased) dated 22<sup>nd</sup> February, 2022, be amended to remove the name of Naomi Wambui Gachiengo Alias Wambui Gachiku Mwangi and Daniel Kamanja Gachiengo.***

***3) THAT the Certificate of Confirmation of Grant dated 2<sup>nd</sup> February, 2022, be rectified to remove the name of Rahab Wangari Gachiengo (deceased) and include the name Daniel Kamanja Gachiengo as an additional administrator.***

**4) THAT Costs of this Application be provided for.**

2. The Applicant seeks appointment as a co-administrator in his capacity as a beneficiary and son of the late administrator, Rahab Wangari Gachiengo. He states that he is a fit and proper person to represent the interests of the first house.
3. He deposes that the primary estate of Harun Gachiengo Kamau was of a polygamous nature, with two houses, which necessitated the prior appointment of two administrators, the late Rahab Wangari Gachiengo and Naomi Wambui Gachiengo, to represent the distinct and hostile interests of the two respective houses.
4. Following the demise of Rahab Wangari Gachiengo on 1<sup>st</sup> June, 2024, the distribution of the estate remains incomplete, thereby creating a vacancy that requires immediate replacement to ensure continued and equitable representation for the first house.
5. The Applicant asserts his suitability for this role by noting that he has already been granted letters of administration for the estate of the deceased administrator on the 17<sup>th</sup> January, 2025, in Nakuru High Court Succession Cause No. E187 of 2024.
6. He further contends that in light of the persistent disharmony and the contentious nature of these proceedings, his appointment is essential to maintain transparency and safeguard the interests of justice.
7. He concludes by restating his firm belief that such an order will not occasion prejudice to any beneficiary and prays that this Honourable Court exercises its discretion to amend the grant dated the 22<sup>nd</sup> day of February, 2022, to include his name as a co-administrator.

8. The **Second** application is dated 19<sup>th</sup> May 2025, filed by the 1<sup>st</sup> Respondent/Administrator (**Naomi Wambui Gachiengo**) instead of a response to the First application. It is a Summons for Revocation of Grant and expressed under Sections 47 and 76 of the Law of Succession Act and Rules 44 and 73 of the Probate and Administration Rules, Seeking Orders:-

*a) THAT the Grant of Letters of Administration intestate issued to the 1st Administrator (now deceased) and the 2nd Administrator on 22nd February 2022 and the Certificate of Confirmation of a Grant issued to the 1st Administrator (now deceased) and the 2nd Administrator on 22nd February 2022 be revoked and a fresh Grant of Letters of Administration intestate and a Certificate of Confirmation of a Grant be re-issued in the names of the surviving Administrator, Naomi Wambui Gachiengo.*

*b) THAT this Court do grant leave to the 2nd Administrator/Applicant to apply for issuance of provisional Title Deeds for land parcel Numbers: (1) NJORO NGATA BLOCK 4/3 (2) BAHATI KABATINI BLOCK 1/1421 (3) NJORO NGATA BLOCK 4/2, (4) NAKURU MUNICIPALITY BLOCK 3/309.*

9. The Application is premised on the grounds on the face of the Application and supported by the Affidavit of the 2<sup>nd</sup> Administrator. She stated that upon the demise of her co-administrator, Rahab Wangari Gachiengo, on 1<sup>st</sup> June, 2024, the existing Grant of Letters of Administration and the Certificate of Confirmation, which were both issued on 22<sup>nd</sup> February, 2022, have become inoperative and legally useless as they cannot be utilised as instruments for the transfer by transmission of property to the beneficiaries.

10. She argues that as the sole surviving administrator, she should assume full responsibility for the estate, especially since the Law of Succession does not provide specific provisions for the substitution of a deceased administrator in this context.
11. Furthermore, that it is a point of common ground between advocates for both the deceased and surviving administrators that the original title deeds for the estate's land parcels are lost and are beyond trace. Consequently, the applicant seeks the Court's leave to obtain provisional title deeds to facilitate the eventual transmission of the properties to the rightful heirs. She maintains that these orders are necessary for the interest of justice and will not prejudice any beneficiary.
12. In response to this application, Daniel Kamanja Gachiengo swore a Replying Affidavit on 8<sup>th</sup> July, 2025, asserting his standing as both a beneficiary and the legal representative of the estate of the late Rahab Wang are Gachiengo, as evidenced by the grant issued in Nakuru High Court Succession Cause No. E187 of 2024.
13. He explains that the deceased, Harun Gachiengo Kamau, was polygamous, which led the court to appoint both his mother and the current Applicant as joint administrators to represent the interests of their respective houses.
14. The Deponent clarifies that while a Certificate of Confirmation of Grant was issued on 22<sup>nd</sup> February, 2022, the distribution of the estate remains incomplete following the death of his mother, Rahab Wangare Gachiengo, on 1<sup>st</sup> June, 2024.
15. He contends that the Applicant's request to revoke the current grant and be appointed as the sole administrator is a self-serving attempt to exclude the first house from the administration process. He further argues that there is no

legal basis for the Applicant to seek the revocation of a confirmed grant and the re-issuance of a new one in her sole name.

16. Furthermore, the Deponent asserts that the Applicant's claim regarding alleged lost title deeds is a fabrication intended to facilitate the secret disposal of estate property, noting that his late mother had previously raised concerns about the Applicant's conduct regarding the estate's assets.
17. He maintains that it is in the interest of justice and the protection of the first house's interests that he be appointed as a co-administrator to replace his deceased mother.
18. In conclusion, he urged this Court to dismiss the Applicant's Summons for Revocation of Grant and instead, to grant his pending application for appointment as an additional administrator.

#### **Applicant's Submissions**

19. The Applicant identified three primary legal questions arising from the applications and supporting affidavits, that is:-
  - 1) Whether a grant of letters of representation issued to joint administrators becomes useless or inoperative upon the death of a joint administrator under Section 76 of the Law of Succession Act.
  - 2) Whether Section 81 of the same Act requires the revocation of such a grant.
  - 3) Whether a new administrator can be appointed to replace the deceased for the purpose of representing their specific house within the family.
20. To address the above issues, the Applicant relies on the persuasive case of ***Re Estate of Tuaruchiu Marete Marete alias Mturuchiu Mmarete alias***

***Turuchiu SO Marete (Deceased)(Succession Cause 82 of 1989) 2019 KEHC 10486 (KLR)***. In his judgment, **F. Gikonyo, J** observed:-

***“There are however situations where an additional administrator should be appointed. For instance where there is a resulting trust, a sole surviving administrator is required to apply for an additional administrator to be appointed which failing the court will appoint on its own motion. Similarly, where the intestate is polygamous, death of one of the administrator may require a replacement for purposes of the house he represented. Or for a good cause and in the best interest of all persons concerned the court may appoint an additional administrator of an estate. This is in discretion under section 66 of the Law of Succession Act. Therefore, there is no complete prohibition of appointing another administrator in addition to a surviving administrator or administrators. Nothing wrong in the appointment of the first administrator herein.”***

21. The Applicant further cites ***Christopher Mukunga Munyi v Peterson Kabuitu Mwangi 2018 KEHC 6092 (KLR)***, where **Ngaah Jairus, J** clarified that a grant does not become inoperative simply because a joint administrator has died. The Judge argued that the moment the joint administrator died, all the powers and duties appurtenant to the administration of the estate became vested in the applicant, who is the surviving administrator as per section 81 of the Law of Succession Act, cap. 160. The court in that case concluded that instead of seeking revocation, the proper course of action for a respondent would be to seek substitution as a joint administrator.

22. Based on these authorities, the applicant argues that the death of a joint administrator does not render a grant useless, as Section 81 ensures powers vest in the survivor; thus, revocation is unnecessary. However, in polygamous setups, the law allows for a replacement to represent a specific house. Consequently, the applicant argues that their Summons dated 21<sup>st</sup> February, 2025, for the appointment of an additional administrator is legally sound, and therefore, the Summons for revocation dated 19<sup>th</sup> May, 2025, must fail.
23. In conclusion, the applicant urges this Court to allow his Summons for the appointment of an additional administrator. He seeks the re-issuance of the amended grant and rectified certificate of confirmation in the joint names of the surviving administrator, Naomi Wambui Gachingo, and the new appointee. Finally, he supports the Respondent's prayer for leave to pursue provisional titles for lost or misplaced land parcels to complete the distribution of the estate, with costs of the applications being in the cause.

#### **Respondent's Submissions**

24. The Respondent submits that there is no provision under the Law of Succession Act or the Probate and Administration Rules for the substitution of a deceased administrator. Citing the Court of Appeal in ***Florence Okutu Nandwa & Another -vs- John Atemba Kojwa, Kisumu Civil Appeal Number 306 of 1998***, the Respondent argues that a grant of representation is made *in personam* and is neither transferable nor hereditary. Therefore, that a grant made to a person who subsequently dies becomes useless and inoperative and exists only to be revoked under Section 76 of the Act.
25. Further, he submits that similarly, in ***Re Estate of GEORGE RAGUI KARANJA (deceased) [2016] eKLR***, Musyoka J held:-

*“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 or survivors of a dead personal representative... 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 to revocation under section 76(e) of the Law of Succession Act, to pave way for appointment of new administrators. The appointment of fresh administrators to take the place of the previous ones following their death is subject to the provisions of sections 51 through to section 66 of the Act.”*

26. Further, that in *Estate of Chemwok Chemitei (deceased) [2021] eKLR* , Olga Sewe J stated that;-

*“ What is envisaged by Section 81 of the Act is that, in the event of the death of one or more of joint administrators, where there are several administrators, the surviving administrator or administrators would then have the mandate to continue with their duties to completion without the need to replace the deceased ones. That Section states thus: “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...”*

27. Further still that in the case of *Florence Okutu Nandwa & Another vs. John Atemba Kojwa. Kisumu Civil Appeal No. 306 of 1998*, the Court of Appeal made it clear that:-

***“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 grant should be made in the usual way, following procedures laid down in the Law of Succession Act and the Probate and Administration (Rules)... The fact that a probate has a solo administrator surviving is indicative of continuity and the interest of the 2nd house would still be met notwithstanding one of the representatives sitting as the administrator.”***

28. The Respondent submits that, the Applicant, Daniel Kamanja Gachiengo, being the Holder of the Grant in respect of his late mother's Estate, is not a guarantee or a ticket that he should automatically inherit his late mother's position as an Administrator of his late father's Estate.
29. He reiterates that the role of an Administrator of the Estate of a deceased person is not transferable and it is not hereditary. He argued that Applicant is only an Administrator of the Estate of his late mother and the two Estates are distinct. An Administrator in one estate cannot become an Administrator in the estate simply because he or she is a holder of a Grant in one Estate. He

therefore urges this Court to disallow the Application dated 21<sup>st</sup> February 2025 with costs to the Respondent.

30. In respect to his application, the Respondent cites the case of **SHAH -VS-SHAH ( number 2) [2002] 2 KLR 607** where the Court held that:-

*“Where any proceedings are governed by special legislation, the provisions of the special legislation must be strictly construed and applied and that the provisions of the Civil Procedure Act and rules do not apply unless expressly provided by such 6-special legislation, and the position remains the same even if the special legislation is silent about and does not exclude the Civil Procedure Act Rules.”*

31. He also references the case of **Re Estate of GEORGE RAGUI KARANJA (deceased) [2016] eKLR**, where Musyoka J held that;-

*“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 or survivors of a dead personal representative... 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 to revocation under section 76(e) of the Law of Succession Act, to pave way for appointment of new administrators. The appointment of fresh administrators to take the place of the previous ones following their death is subject to the provisions of sections 51 through to section 66 of the Act.”*

32. The Respondent submits that this Court has jurisdiction to order or to grant leave to the Administrator of the Estate of the deceased to apply for replacement of the now lost Title Deeds in the deceased's names, then have them distributed in terms of the Certificate of Confirmation of the Grant. To support this position, he relies on the case of ***Re Estate of Adriano Nthiga Thangari (deceased) [2024] KEHC 8913 (KLR)*** that held:-

***“Firstly, the respondent has challenged the jurisdiction of this court to order cancellation of titles. It is her argument that such an order may only be granted by the Environment and Land Court. The issue of cancellation of titles arises from this court’s ruling revoking the grant that had been issued to the respondent. In this case, the High Court bears jurisdiction to order cancellation of titles since it is the only way to give effect to its judgment. Once the grant was revoked, it became necessary that the estate of the deceased be reconstituted as it was, before the respondent petitioned for the grant. Therefore, this court bears jurisdiction to determine the application herein since it arises within a succession cause. In the case of Santuzza Bilioti alias Mei Santuzza (Deceased) v Giancarlo Falasconi [2014] eKLR the court held: “ .....the succession court has powers to order a title deed to revert to the names of a deceased person. This in effect amounts to cancellation of the title deed. Further, a succession court can order a cancellation of a title deed if a deceased's property is being fraudulently taken away by non-beneficiaries, such as where the property is being sold before a grant is confirmed.” ” As it is, the applicant has moved the court seeking the orders herein. The application has been considered by the court***

*on the strength of Rule 49 of the Probate and Administration Rules which provides: - “ A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary, by affidavit... Section 47 of the Law of Succession Act and Rule 73 of the Probate & Administration Rules gives the High Court discretion to determine any matter before it in the interest of justice. (see also the cases of In re Estate of Simon Kiprop Cheruiyot (Deceased) [2021] eKLR and In Re Estate of the Late Kubuta Kamara Nguuro Alias Pharis Njegegu (Deceased) [2021] eKLR (supra)). In light of the foregoing, it is necessary that the orders sought be granted.”*

33. In conclusion, the Respondent submits that it is in the interest of justice and the Estate herein that the prayers sought are granted.

**Analysis and Determination**

34. Upon consideration of the two Applications, responses, and the rival Submissions filed herein, the issues for determination are:-

1. *Whether the grant herein should be revoked.*
2. *Whether the deceased administrator should be substituted.*
3. *Whether the court should grant leave to the administrator(s) to apply for provisional title deeds for parcels NJORO NGATA BLOCK 4/3, BAHATI KABATINI BLOCK 1/1421, NJORO NGATA BLOCK 4/2, and NAKURU MUNICIPALITY BLOCK 3/309 to facilitate the final distribution of the estate.*

35. On the **first issue** regarding Revocation of Grant, Section 76 of the Law of Succession Act 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.”***

36. Regarding instances when a Grant can be revoked in the case of *Re Estate of Prisca Ong'avo Nande (Deceased)* [2020] eKLR Musyoka J explained thus;-

*“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.”*

37. In the present case, this Court is persuaded by the decision in *Re Estate of Prisca Ong’avo Nande (Deceased)* (supra). Being the surviving Administrator, the death of the co-administrator does not make the Grant inoperative. The circumstances do not warrant the Respondent’s quest for revocation of the Grant within the threshold given under Section 76 of the Law of Succession Act.

38. On the **Second issue**, that is, whether the Applicant can substitute his deceased mother as a co-administrator, the Law of Succession Act does not provide for the substitution of a deceased administrator (s). Section 81 of the Law of Succession Act provides that:-

*“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.”*

39. It is acknowledged that the Courts have consistently held that where an administrator was appointed specifically to represent the interests of a particular house in a polygamous set up, the death of an administrator may

necessitate a replacement to ensure that each house remains equitably represented and that the administration of the estate remains transparent and inclusive.

40. However, the fact that the Applicant has a Grant of Letters of Administration of the Estate of his late mother, who was a joint administrator in the Estate of his father, the subject of this Succession Cause, may not automatically make him an administrator of the estate of his father, notwithstanding the highlighted history of hostility, disharmony and mistrust existing between the two houses.
41. It is clear that the Grant herein was issued to two joint administrators and it has been confirmed. As per the law, the death of one does not terminate the mandate as the surviving administrator maintains the legal authority to continue the administration of the estate to completion without the necessity of replacing the deceased co-administrator or adding an administrator at this stage.
42. The Grant held by the surviving Administrator remains operational and she is obligated to proceed and complete the distribution of the estate of **Harun Gachiengo Kamau (Deceased)**.
43. Lastly, and regarding the 2<sup>nd</sup> Administrator's prayer seeking to be granted leave by this Court to apply for provincial title, both parties agree that some of the title deeds being:- **Njoro Ngata Block 4/3 (2) Bahati Kabatini Block 1/1421 (3) Njoro Ngata Block 4/2 (4) Nakuru Municipality Block 3/309**, have gone missing or cannot be traced.
44. Section 79 of the Law of Succession Act provides that;-

***“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all***

*purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”*

45. Administrators/personal representatives have further been given powers under Section 82(1) of the Law of Succession Act thus;-

*“Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers—(a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;”*[Emphasis added].

46. Consequently, administrative tasks, such as applying for provisional titles to replace lost or destroyed documents, fall within the statutory powers of an administrator of the estate. It is therefore not necessary for an administrator to seek leave as done here since the power is already granted by law to do so in order to protect and preserve the assets of this estate. The surviving Administrator should urgently ensure full distribution of the estate herein.

47. In conclusion therefore:-

**1. Both applications herein are without merit and therefore disallowed.**

**2. There are no orders as to costs.**

**Dated, signed and delivered at Nakuru this 13<sup>th</sup> day of April, 2026.**

**PATRICIA GICHOHI  
JUDGE**

**In the presence of:**

**Mr. Mbuthia for Daniel Gichengo (proposed additional Administrator)**

**Ms Wangui h/b for Karanja Mbugua for the Respondent  
Erickson, Court Assistant**

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