

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

SUCCESSION CAUSE NO. 5 OF 2020

**IN THE MATTER OF THE ESTATE OF THE KATE HENRY STANLEY
KIPLAGAT KOROS (DECEASED)**

**Coram: Before Justice R. Nyakundi
J.C. Chumba & Co. Advocates**

RULING

1. Before this court is summons for substitution and further rectification of grant expressed to be brought under Sections 47 & 74 of the Law of Succession Act and Rules 49 & 73 of the Probate and Administration Rules. The applicant seeks the following orders:
 - a. *Spent.*
 - b. *The late Viola Nekesa Wafula, who was the administrator of the estate herein and to whom the Grant of Letters of Administration Intestate was issued and subsequently confirmed, having since died, be and is hereby substituted with her daughter, Meek Jebet Koros, as the administrator of the estate.*
 - c. *The rectified Certificate of Confirmation of Grant issued on 2nd February 2024 be amended and the property known as ELDORET MUNICIPALITY/BLOCK 13/242 assigned to the late Viola Nekesa Wafula registered in the joint names of Trina Chepchirchir Koros, Meek Jebet Koros and Shalom Jepkalya Koros.*
2. The application is based on the following grounds:
 - a. *That a Grant of Letters of Administration Intestate was issued to Violet Nekesa Wafula in respect of the estate herein.*
 - b. *Violet Nekesa wafula died on 24th December 2025 before the transmission of the estate had been completed.*

- c. According to the rectified certificate of grant the ELDORET MUNICIPALITY/BLOCK 13/242 had been given to Violet Nekesa Wafula, which now devolves to her daughters, Trina Chepchirchir Koros, Meek Jebet Koros and Shalom Jepkalya Koros as the only beneficiaries of their late mother.*
 - d. All the beneficiaries have consented to having the said property registered in the names of Trina Chepchirchir Koros, Meek Jebet Koros and Shalom Jepkalya Koros as the only children of their late father and mother.*
 - e. Save for the said property all other properties of the Deceased have been transmitted to the rightful heirs.*
 - f. It is in the interests of justice that the application herein be allowed.*
3. In support of the application is the affidavit of Meek Jebet Koros who deponed as follows:
- a. That I am a female adult of sound mind and hence competent to swear this affidavit.*
 - b. That I am the daughter of the late Violet Nekesa Wafula, who was the administrator of the estate of my late father, Henry Stanley Kiplagat Koros.*
 - c. That the Grant of Letters of Administration was confirmed and a Rectified Certificate of Confirmation of Grant issued on 2nd February 2024.*
 - d. That my mother passed away in December 2025, before completing transmission of the estate*
 - e. That it has therefore become necessary to substitute her name with mine to enable completion of administration of the estate.*
 - f. That the property known as Eldoret Municipality/Block 13/242 which was the share given to our late mother be registered in the joint names; Trina Chepchirchir Koros, Meek Jebet Koros and Shalom Jepkalya Koros.*

- g. That my stated two sisters above have consented on my name be substituted with our late mother.
- h. That there are no other beneficiaries entitled to the said property.
- i. That it is just and lawful that the grant be substituted and further rectified as prayed.

ASSETS	BENEFICIARIES	
ELDORET MUNICIPALITY BLOCK 13/242	VIOLET NEKESA WAFULA WHOLE	
PIONEER/RACECOURSE BLOCK 2(KAMALEL)206		
PIONEER/RACECOURSE BLOCK 2(KAMALEL)205		
PIONEER/RACECOURSE BLOCK 2(KAMALEL)202		
PIONEER/RACECOURSE BLOCK 2(KAMALEL)231		
NANDI/KAPSIMOTWO BLOCK 3/110(UNDERIT)		
MOTOR VEHICLE REGISTRATION NO.KCJ 262T		
COOPERATIVE BANK ACCOUNT NO. 01109046283700		
DIAMOND TRUST ACCOUNT NO. 018644900110		
EQUITY ACCOUNT NO. 092026720545		
NIC BANK ACCOUNT NO. 2075370012		
PIONEER/RACECOURSE BLOCK 2(KAMALEL)204		TRINA CHEPCHIRCHIR KOROS WHOLE

<i>PIONEER/RACECOURSE BLOCK 2(KAMALEL)123</i>	
<i>NANDI/KAPSIMOTWO BLOCK 3/98(UNDERIT)</i>	
<i>NANDI/KAPSIMOTWO BLOCK 3/103(UNDERIT)</i>	
<i>NANDI/KAPSIMOTWO BLOCK 3/109(UNDERIT)</i>	
<i>NANDI/KAPSIMOTWO BLOCK 3/263(UNDERIT)</i>	
<i>NANDI/KAPSIMOTWO BLOCK 3/274(UNDERIT)</i>	

Decision

4. In Kenya the death of an administrator is governed by the law of Succession Act with the following principles applicable: for the law does not allow direct substitution of a deceased administrator but rather necessitate a fresh application for a new grant. In the event of a sole or joint administrator passing on by dint of death the grant of representation becomes useless and inoperative. The estate administration stops and a new administrator/ administrators must be appointed through a court application to finish the job. However, the principle of survivorship under Section 81 of the Act applies where the surviving administrator automatically acquires the power to continue administration without the necessity of a replacement. Incidentally in the instance estate both administrators have since been declared as deceased.
5. The court 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.”

In addition, in **re Estate of George Ragui Karanja (Deceased) [2016] EKR**, Hon, Justice William Musyoka held as follows: -

“The Law of Succession Act does not expressly provide for substitution of personal representatives who die in once, 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 soles 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.”

6. From the above principles of law, the death of an administrator is a ground of revocation of grant of letter of administration whether confirmed or not. What this means the application of rectification and amendment as applied by the applicant dated 2nd February 2026 is fatally defective. There is need for a fresh application to be made for a new appointment of administrators under Section 66 of the Law of Succession Act. This is what the court reaffirmed in the case of **Florence Okutu Nandwa and Another Vs John Atebakojwa, Court of Appeal Civil Appeal in Civil Appeal No. 306 of 1998** the court held 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 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.”

Additionally, 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.*
7. What was expected of the applicant was to apply for revocation or annulment of the grant on the ground that the grant has become useless and inoperative through subsequent circumstances. The applicant would also have proceeded to put a prayer in the same application that a new grant be made to them as well as add further prayer if need be for the confirmation of the new grant. The application obviously must be supported by the consent of the surviving beneficiaries. The appointment of fresh administrators for the process to take place must be subjected to the provisions of Section 51 through to Section 66 of the Act.
8. In my considered view the applicants to this estate must fill and file form P & A 80, P & A 57, P & A 4 etc. as a procedural requirement of the law. There shall be no appointment of administrators without complying with the express Provisions of the Act and Rules. This application is for fresh appointment of administrators and cannot be governed by Section 74 of the Act on rectification. As a consequence, therefore the applicants be at liberty to pick up the process of legitimizing the appointment in line with the law. The status conference be held on 18th May 2026 before the Deputy Registrar of the High Court.

**DATED, DELIVERED AND SIGNED VIA CTS AT ELDORET THIS 6TH DAY
OF MAY 2026.**

.....

R. NYAKUNDI

JUDGE