



REPUBLIC OF KENYA



**(Probate & Administration 65 of 1987) [2025] KEHC 2239 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2239 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NYERI**  
**PROBATE & ADMINISTRATION 65 OF 1987**  
**MA ODERO, J**  
**FEBRUARY 28, 2025**  
**IN THE MATTER OF THE ESTATE OF NJAMA WERU (DECEASED)**

**RULING**

1. Before this Court for determination is the Summons for revocation of Grant dated 16<sup>th</sup> September 2024 filed by the Applicant Charles Mwangi Ndegwa seeking the following orders:-
  - “ 1. That the Grant of letters of Administration has become useless and inoperative though subsequent circumstances as the Administrator of the estate of the deceased herein died on 28<sup>th</sup> October 2023.
  2. That the Applicant herein be appointed such Administrator and the grant be confirmed notwithstanding the statutory six (6) months.”
2. The Summons which was premised upon Section 76 (e) *Law of Succession Act* and Rule 44 of the Probate and Administration Rules was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondent opposed the Summons for revocation of Grant and in so doing relied upon the Replying Affidavit dated 23<sup>rd</sup> October 2024 sworn by Joseph Kanyingi Njama the 3<sup>rd</sup> Respondent.
4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 6<sup>th</sup> December 2024 whilst the Respondents relied upon their written submissions also dated 6<sup>th</sup> December 2024.

**Background**

5. This Succession Cause relates to the estate of the late Njama Weru (hereinafter ‘the Deceased’) who died on 16<sup>th</sup> May 1987. The Deceased is said to have died testate having left behind a written will dated 12<sup>th</sup> June 1985. In said written will the Deceased appointed his Advocate Mr. Amrijlal Tulsipas Dharamshi Ghadialy as Trustee of his will.
6. The Deceased had one wife Ann Nyaguthii Njamawho is also Deceased. He was survived by ten (10) children as follows:-



- (1) Esther Wairimu Njama - Daughter
  - (2) Stephen Ndegwa Njama - Son
  - (3) Richard Njeru Njama - Son
  - (4) Francis Wachira Njama - Son
  - (5) John Ngotho Njama - Son
  - (6) Joseph Kanyingi Njama - Son
  - (7) Simon Maina Njama - Son
  - (8) Purity Wanjiru Njama - Daughter (Deceased)
  - (9) Veronica Wangeci Njama - Daughter
  - (10) Richard Njeru Njama - Son
7. The estate of the Deceased comprised the following assets:-
- (a) Land Reference Number Aguthi/Muruguru/1062
  - (b) Land Reference Number Aguthi/Muruguru/1061
  - (c) Land Parcel A/740 at Burquret Arimi Company Limited, Naromoru.
  - (d) Cash in Nyeri District Co-operative Union
  - (e) Cows, goats, sheep etc.
8. Following the demise of the Deceased the Trustee/Executor named in the Written Will sought and obtained Grant of Probate with written will which Grant was issued on 18<sup>th</sup> May 2009. The said Grant was duly confirmed on 24<sup>th</sup> July 2009.
9. However the Executor of the will passed away on 15<sup>th</sup> October 2007 before the estate was distributed to the named beneficiaries. The first born of the Deceased Stephen Ndegwa Njama formally took over as Executor and was issued with Grant of Probate on 18<sup>th</sup> May 2009 which Grant was confirmed on 24<sup>th</sup> July 2009 and moved to distribute the estate in accordance with the written will. Unfortunately the said Stephen Ndegwa Njama also passed away on 28<sup>th</sup> October 2023. A copy of the Death Certificate Serial No. 1466xxx is annexed to the Affidavit dated 16<sup>th</sup> September 2024.
10. The other children of the Deceased filed the Summons for revocation of Grant dated 12<sup>th</sup> June 2024 seeking revocation of the Grant issued to Stephen Ndegwa Njama on grounds that the said Grant had been rendered useless and inoperative on account of the demise of the holder of the Grant.
11. The summons for revocation of Grant was heard and vide the Ruling delivered on 22<sup>nd</sup> September 2022, Hon. Lady Justice Muchemi dismissed the application for revocation of the Grant.
12. Thereafter the current application was filed seeking to have the Grant issued to Stephen Ndegwa Njama revoked on grounds that the same is now inoperative on accounts of the demise of the Grant holder. It is relevant to note that a similar application had been filed on 12<sup>th</sup> June 2004 by one Francis Wachira but that application was never prosecuted as the Applicant passed away on 1<sup>st</sup> August 2024. (see Death certificate Serial No. 167xxxx Annexure 'JK NI(b)



13. In opposing the current application for revocation of Grant, the Respondent complains that the present application is filed by his nephew who is a son to their late brother Stephen Ndegwa Njama. That said nephew being a 'grandson' of the Deceased does not rank in priority over the biological children of the Deceased who are still alive. The Respondent contends that in the circumstances the application ought to have been filed by one of the children of the Deceased.
14. The Respondent also seeks that the Grant be rectified as his name has been merged with the name of his late brother Francis Wachira Njama.
15. The Respondent goes on to challenge the validity of the will stating that he was bequeathed a parcel of land in Sweet waters, which land he has never seen and no search of said land was annexed. That the will named him as 'Joseph Kanyenje' which is erroneous as that is not his official name.
16. According to the Respondent this succession cause is not ripe for distribution as the Grant would first have to be re-issued and the written will authenticated. He further contends that the property listed in the written will as Aguthi/Muruguru/382 no longer exists as the same was subdivided into two parcels being Aguthi/Muruguru/1061 and Aguthi/Muruguru/1062. That in the absence of a codicil the court would be sanctioning an illegality. That the question of the validity of the written will goes to the root of the matter. As such the Respondent prays that the Summons be dismissed.

### **Analysis And Determination**

17. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
18. The Applicant has prayed to have the Grant issued to Stephen Ndegwa Njama revoked on account of the demise of the said Executor. It is common ground that this Stephen Ndegwa Njama was issued with a Grant of Probate on 18<sup>th</sup> May 2009. The Death Certificate Serial No. 146xxx (Annexed to the Supporting Affidavit) confirms that this Stephen Ndegwa Njama passed away on 28<sup>th</sup> October 2023 before finalizing the distribution of the estate.
19. Section 76 of the *Law of Succession Act* provides that a Grant may be revoked if the same is found to have become useless and/or inoperative. Where a single Executor/Administrator dies then the grant is rendered both useless and inoperative. This is because a Grant of representation is issued to a particular person or persons. It is given 'in personam' and cannot be transferred to a third party under any circumstances.
20. It would appear that the *Law of Succession Act* did not contemplate the death of a single Executor/Administrator to an estate. Section 81 of the Act deals with a situation where one or more of several administrators passes away. In such a situation the surviving Administrator [s] are mandated to proceed with the administration of the estate to finality.
21. 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.” [own emphasis]

22. Similarly 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 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 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 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.

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 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.” [own emphasis]

23. Finally on this point in *Re Estate Of Elijah Oktah Mikah Tsimbwele (Deceased)* [2021] eKLR, Hon. Justice Musyoka stated that

“The death of one or more administrators does not affect the grant, in terms of rendering it invalid or inoperative or useless. Under Section 81 of the Act, the powers and duties of personal representative rest in the surviving personal representative on the death of one of them. Section 76(e) of the Act only applies where there is a sole administrator who then dies.....”

24. I am in agreement with the above authorities. In this case the holder of grant has passed away. He was a single Executor. In the circumstances the Grant is rendered useless and inoperative. There is no other option but to revoke the Grant which was issued to Stephen Ndegwa Njama and to have the Grant re-issued to another person.

25. The next obvious question is who should be appointed Executor to replace the Deceased Administrator. The Applicant prays that the court appoint him as Administrator to replace the Deceased Executor. The Respondent objects on grounds that being a son to the Deceased Administrator and therefore a ‘grandson’ to the Deceased, the Applicant does not qualify for appointment as he does not rank in priority over the biological children of the Deceased.



26. In his replying affidavit the Respondent specified that the Applicant herein is the son of the deceased grant holder Stephen Ndegwa Njama who was a son to the Deceased. In other words the Applicant is a 'grandson' to the deceased. This is not denied by the Applicant.
27. The persons who have proper 'locus standi' in a succession cause are legal heirs/beneficiaries of the estate. The Applicant would only qualify as an interested party if he was able to demonstrate that he was a dependant of the Deceased in terms of Section 29 of the *Law of Succession Act*.
28. The Deceased in this matter was not survived by a spouse. He was however survived by several children including the Respondent. It is the children of the Deceased who rank in priority to obtain Grant of letters of Administration to the estate. The Applicant must show that he has an 'interest' in the said estate.
29. In the case of *Mercy Njoki Irungu vs. Lucy Wamuyu Maruru* [2016] eKLR the court held as follows:-
- “It is a requirement that a party to a probate claim must have ‘interest’ in the estate. The foundation of title to be a party to a probate or administration action is “interest” - so that whenever it can be shown that it is competent to the Court to make a decree in a suit for probate or administration, or for the revocation of probate or of administration, which may affect the interest or possible interest of any person <sup>[9]</sup> such person has a right to be a party to such a suit in the character either of plaintiff, defendant, protestor or intervener .....
- Interested person” or “person interested in an estate” includes, but is not limited to, the incumbent fiduciary; an heir, devisee, child, spouse, creditor, and beneficiary and any other person that has a property right in or claim against a trust estate or the estate of a decedent, word, or protected individual or a person that has priority for appointment as personal representative and a fiduciary representing an interested person. The Blacks’ Law Dictionary defines “interested party as a party who has recognizable stake (and therefore standing) in the matter. [own emphasis]
30. The Applicant being a grandson of the Deceased may only step in to represent the interests of his late father and even then the Applicant must demonstrate that he has legal authority to represent the late father’s estate i.e by holding a Grant of Administration to his late father’s estate. The Applicant has not shown the court any such Grant.
31. Therefore the Respondent being a biological child of the Deceased is at the 1<sup>st</sup> degree and ranks in priority over the Applicant who is a grandchild of the Deceased.
32. That is not to say that grandchildren can never inherit from the estate of their grandparents where the child of a deceased person passes away then the grand child of that Deceased may step in and inherit the share of the estate due to their deceased parent.
33. In *Re Estate of Wahome Njoki Wakagoto* (2913) eKLR it was held:-
- “Under Part V, grandchildren have no right to inherit their grandparents who died intestate after 1<sup>st</sup> July 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents’ indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead. The



grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.” [own emphasis]

34. In the case of *Cleopa Amutala Namayi v Judith Were Succession* Cause 457 of 2005 [2015] eKLR Hon. Mrima, J. observed that;

“Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparents.... The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit from their grandparents indirectly through their own parents..... The children to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren inherit directly from their grandparents is when the grandchildren’s own parents are dead..... [own emphasis]

35. I therefore find that the Appellant cannot claim a right in priority over the estate of the Deceased for as long as the biological children of the Deceased are still alive.
36. For the above reasons I find and hold that the Applicant does not qualify to be issued with a Grant of Representation in respect of the estate of the Deceased. I direct that the remaining children of the Deceased meet and forward to the court the name or names of person (s) to be appointed as Executors to replace Stephen Ndegwa Njama.
37. The Respondent in his reply has made certain prayers. Firstly that his name which was merged with the name of his late brother FRancis Wachira Njama To Read Francis Kanyingi Njama. He prays that the Grant be rectified to include his correct name being Joseph Kanyingi Njama. In as much as rectification of a Grant is provided for by Section 74 of the *Law of Succession Act* such application can only be brought by the holder of the Grant. Since the Grant had been revoked such application must abide the appointment of a new Executor and re-issuance of the Grant.
38. The Respondent has also challenged the authenticity of the written will dated 12<sup>th</sup> June 1985. He has also sought to have removed from the will a certain assets which he claims do not exist. Additionally the Respondent sought to have the spelling of his name in the written will corrected.
39. The above are not issues which the court can determine under the auspices of this Summons which was filed not by the Respondent but by the Applicant. The Respondent cannot piggyback on the Summons filed by the Applicant to seek orders in his Replying Affidavit.
40. If the Respondent has issues with the Written will then he must file a substantive application himself raising the issues he has and specifying what prayers he is seeking. I therefore decline to grant the prayers sought by the Respondent.
41. Finally this Summons is partially successful and the court makes the following orders.
- (i) A declaration be and is hereby issued that the Grant of Probate issued to one Stephen Ndegwa Njama on 18<sup>th</sup> May 2009 has become useless and inoperative following the demise of the said Stephen Ndegwa Njama.
  - (ii) The Grant issued to Stephen Ndegwa Njama be and is hereby revoked.
  - (iii) The beneficiaries to decide on alternate Executors and name[s] to be submitted to this court within fourteen (14) days of the date of this judgment.
  - (iv) This being a family matter I make no orders on costs.



DATED IN NYERI THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2025

.....

MAUREEN A. ODERO

JUDGE

