



In re Estate of Philip Kipkorir Sete (Deceased) (Succession Cause 306 of 1999) [2025] KEHC 7504 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7504 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 306 OF 1999**

JK SERGON, J

MAY 29, 2025

IN THE MATTER OF THE ESTATE OF PHILIP KIPKORIR SETE (DECEASED)

IN THE MATTER OF

MARGARET CHEROTICH KORIR PETITIONER

RULING

1. The application coming up for determination is a petition for grant of letters of administration de bonis non in respect of the estate of Philip Kipkorir Sete (the deceased) who died on 19th August, 1999 limited to that part of the said estate remaining un-administered by the administrator who died before she could complete the distribution of the estate.
2. The application is supported by grounds on the face of it and an affidavit in support of the petition for limited grant sworn by Margaret Cherotich Korir the petitioner herein.
3. She avers that the deceased whose estate the succession proceedings herein relate is Philip Kipkorir Sete (Deceased) and that she has made the instant application in her capacity as the deceased's daughter in law, she attached a copy of an introductory letter from the chief dated 4th June, 2024 evidencing as much.
4. She avers that on 29th November, 2000 this court confirmed the letters of administration intestate issued to Roda Chepngetich Sete who was the sole administrator in the estate of Philip Kipkorir Sete, she attached a copy of the Certificate of Confirmation of Grant.
5. She avers that the said Roda Chepngetich Sete died on 27th April, 2024 having fully administered the entire estate which was captured in the Certificate of Confirmation of Grant.
6. She avers that they discovered that the said Roda Chepngetich Sete (now deceased) later had inadvertently left out one of the deceased's properties known as LR No. Kericho/Kabartegan/813, and as such the said property remains un-administered, she attached a copy of the certificate of search.



7. The applicant further avers that the deceased administrator had sold the aforesaid parcel of land measuring 0.4 Ha to Franklin Kiprotich and Benard Kipkorir in equal portions of 0.2 Ha who had been in occupation of the same.
8. She avers that in a bid to rectify this error, the deceased administrator vide an application dated 2nd October, 2023, approached this Honourable Court for review of its orders seeking to distribute the said property to the said Purchasers. And that unfortunately, the said applicant passed away before the determination of the said application.
9. She avers that as a result of the error above, the Petitioner herein has been unable to effect final distribution of the deceased's estate and the deceased's heirs have consented to the making of letters of administration of grant to her in order to capture the deceased's assets in totality and transfer the same to the aforesaid purchasers, she attached a copy of the duly executed consent.
10. She avers that it is thus in the interest of justice that a fresh grant of letters intestate be issued to her in respect to the estate of the deceased and that it is desirable that the remaining part of the deceased's estate be accordingly administered to avert a situation where there is incomplete administration of the estate of the deceased.
11. The application came up for hearing and the Learned Counsel for the Petitioner/Applicant urged this court to allow the petition for limited grant as the same is unopposed.
12. I have considered the petition and the sole issue for determination is whether to issue grant de bonis for purposes of completion of the administration of the estate of the deceased, that is limited to the part of the said estate remaining un-administered. The instant petition though clothed as a petition for grant de bonis it is clear that the petitioner herein is seeking the substitution of a deceased single administrator.
13. There is no specific provision in succession law which provides for substitution of a single deceased administrator/executor. Upon the demise of a single administrator/executor, the grant becomes useless and inoperative through subsequent circumstances and therefore section 76 (e) of the Law of Succession Act CAP 160 comes to play and subsequently a fresh grant of letters of administration de bonis non is issued.
14. The grant issued on 29th November, 2000 became “useless and inoperative” with the demise of the deceased administrator.
15. Section 76 (e) of the Law of Succession (*supra*) requires that in such circumstances the grant be revoked. The Applicant ought to have moved the court for revocation of the earlier grant and for a ‘grant de Bonis administratis’ (often referred to as ‘grant de Bonis non’).
16. This position was aptly considered in the matter of the estate of Mary Wairimu Ngware (deceased) in Nairobi High Court Succession Cause No. 2018 of 2001 where Justice Khamoni dismissed an application seeking substitution of a deceased single administrator without revoking the grant first under Section 76 (e) of the Law of Succession.
17. In the case of the Estate of Ngaigwo M’Shomba (Deceased) [2019] eKLR Muchemi J. found that an application made under similar circumstances was incompetent and therefore proceeded to strike it out. The Learned Judge observed as follows;

“... For the above reasons stated, the application before me and the prayers seeking to directly substitute the deceased administrator is not legally and procedurally correct. The applicant advised to make an appropriate application for revocation of the grant and then seek issuance



of a fresh grant of letters of administration de bonis non and subsequent confirmation of the grant.”

18. The instant application, in my view is incompetently before this Court. The application is inappropriate under the Law of Succession
19. In light of the foregoing, the petition dated 22nd October, 2024 seeking for a Grant of Letters of Administration de bonis non in respect of the estate of Philip Kipkorir Sete, Deceased is incompetent and without merit. The same is dismissed and struck out with no orders as to costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 29TH DAY OF MAY, 2025.

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant - Rutoh

Kipkorir for the Petitioner

