



REPUBLIC OF KENYA



**In re Estate of Stephen M'imanyara (Deceased) (Succession Cause  
13 of 2018) [2024] KEHC 2098 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2098 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 13 OF 2018  
EM MURIITHI, J  
FEBRUARY 29, 2024**

**BETWEEN**

**HONESTY KANYUA MANYARA ..... PETITIONER**

**AND**

**LEE KIMATHI NJUE ..... 1<sup>ST</sup> PROTESTOR**

**DR. BERTHA KAIMENYI ..... 2<sup>ND</sup> PROTESTOR**

**AND**

**KIOGORA MUTAI ..... INTERESTED PARTY**

**RONALD MUTUMA MUTAI ..... INTERESTED PARTY**

**NORAH NTUI MUTAI ..... INTERESTED PARTY**

**RULING**

1. By Summons for Revocation of Grant dated 16/1/2023 under sections 47 and 76 (e) of the [Law of Succession Act](#), Rule 73 of the [Probate and Administration Rules](#) and any other enabling provision of the law, the Interested Parties seek that,
  1. Spent
  2. This honorable Court be pleased to revoke/annul the grant issued to the petitioner on 22-10-2018 since it has become inoperative and useless by dint of her death on 24-10-2022.
  3. This honorable court be pleased to appoint the Interested Parties Kiogora Mutai, Norah Ntui Mutai and Ronald Mutuma Mutai as joint administrators of the estate of the deceased since Honesty Kanyua the sole administrator passed on before the temporary grant issued to her was confirmed.



4. The costs for and incidental to this application be provided for.
2. The application is premised on the grounds on the face of it and supporting affidavit of the 1<sup>st</sup> Interested Party sworn on even date. He avers that the deceased was their father while the Petitioner was their mother. The grant issued to the Petitioner on 22/10/2018 has since become inoperative by dint of her death on 24/10/2022, and unless the orders sought are granted, the administration of the estate will hang in abeyance. The beneficiaries of the estate will not be prejudiced if the orders herein are granted, and the pending protests on distribution can only be heard if fresh administrators are appointed. As the children of the deceased, they rank highest and in pari passu with other surviving children of the deceased upon the death of the surviving spouse.
3. The 1<sup>st</sup> Interested Party swore a further affidavit on 10/3/2023 in support of the application.
4. The 1<sup>st</sup> Protestor opposed the application by his replying affidavit sworn on 13/2/2023. He contends that the application is unconstitutional, unfair, lacks any merit, displays the egotistical nature of the Interested Parties and it demonstrates how self-centered and indifferent they are to the welfare of the other children of the deceased. The deceased was survived by Dr. Bertha Kaimenyi, Eva Njukia, Kiogora Mutai, Norah Ntui, Ronald Mutuma and Lee Kimathi Njue. He laments that the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties have employed all tricks to delay the finalization of this matter as their house is benefitting and running the deceased vast estate to the exclusion of the Protestors. He and his witness gave very elaborate evidence to prove that he is a son of the deceased and how he was providing for him during his lifetime. From the evidence that was adduced in support of his case, the court ordered that he undergoes a sibling DNA with the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties, to determine his paternity, which orders the Interested Parties completely ignored. In an attempt to delay the hearing of this matter further, the Interested Parties made an application on 6/4/2021 to have this matter heard de novo, which was dismissed. He accuses the Interested Parties of acting out of selfishness as they want the deceased estate to be exclusively managed by their house while continuing to employ all tactics to delay the finalization of this matter.

### **Submissions**

5. The Interested Parties did not file any submissions.
6. The Protestors urge that a grave miscarriage of justice will occur if the Interested Parties are appointed as joint administrators, since they will proceed to distribute the estate to the exclusion of the 1<sup>st</sup> protestor. They urge that it is imperative and invariable that the order of 5/12/2019 on sibling DNA be enforced before further delving into the administration of the estate in order to ensure their interests are fully protected onwards, and cite *Teacher's Service Commission v Kenya National Union of Teachers & 2 others* (2013) eKLR and *MN v TAN & another* (2015) eKLR.

### **Analysis and Determination**

7. The issue for determination is whether the death of Honesty Kanyua Manyara, the sole Administrator herein rendered the grant inoperative, to warrant its revocation.
8. Section 76 of the *Law of Succession Act* sets out the requirements for revocation or annulment of grant as follows:-

“76. 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.”

9. Where there is more than one executor or administrator, section 81 of the *Law of Succession Act* significantly 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 executors or administrators shall become vested in the survivors or survivor of them....”
10. Naturally, upon the death of a single administrator the duties of the legal representative have no owner and the Grant to the deceased executor/administrator must be taken to have expired and become inoperative, in the language of section 76 (e) of the Act. It is incontestable that a grant in the name of a deceased person cannot be implemented and a fresh grant must upon such death be issued to a living person.
11. I respectfully agree with the Court *In Re Estate of Ngaigwo M’Shomba (Deceased)* [2019] eKLR, the court (F. Muchemi J.) held that;

“Where a single administrator or executor dies, before completion of the succession proceedings, the appropriate direction to take is for the applicant to apply for a grant of letters of administration de bonis non. This can only be done by revoking the grant under Section 76 (e) and rule 44 of the Probate and Administration rules and paragraph 16 of the 5<sup>th</sup> schedule. Technically or legally, the grant has become useless and inoperative.”



12. Similarly, in *Julia Mutune M'mboroki v John Mugambi M'mboroki & 3 others* [2016] eKLR, the court (F. Gikonyo J.) held that;

“...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. I am aware that the *Law of Succession Act* does not define or say what constitutes “the grant has become useless and inoperative through subsequent circumstances”. But, in my opinion, death of an Administrator would be a sufficient reason to revoke a Grant for having become useless and inoperative due to subsequent demise of its holder. 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.”
13. This court finds that the death of the administrator Honesty Kanyua Manyara, the Petitioner herein, rendered the grant issued to her on 22/10/2018 inoperative, within the meaning of Section 76 of the *Law of Succession Act*, and it is up for revocation.
14. The 1<sup>st</sup> Protestor urges that the issuance of a fresh grant to the Interested Parties will occasion great injustice to him as the Interested Parties will proceed to administer the estate at his exclusion.
15. The estate of a deceased person must have an administrator/administratrix. The law permits the appointment of upto 4 legal representatives administrators see section 58 of the *Law of Succession Act*. The Court may also appoint the Public Trustee as the administrator. But appointment of administrators does not make them sole heirs to the exclusion of other beneficiaries.
16. In addition, the dealings of the administrators with the estate assets are subject to an order for account as may be ordered by the Court, in accordance with section 83 of the *Law of Succession Act*. The 1<sup>st</sup> Protestor’s fears are manifestly unfounded as the grant of Letters of Administration does not pre-empt the hearing, nor prejudge the merits of the Protests that they have filed together with the 2<sup>nd</sup> Protestor. Particularly, the appointment and issue of a fresh Grant of Letters of Administration does not impede the enforcement of the order for sibling DNA testing made previously in this cause. Indeed, the Estate of the deceased is now represented by a duly appointed legal representative with powers under section 82 of the Act to sue and be sued on behalf of the Estate.
17. The Court does feel, however, that in appointing all the three Interested Parties as administrators, the process of administration and eventual distribution will become protracted and hampered by inefficiencies of the need for concerted action and decision making among the three proposed co-administrators who are of equal ranking in priority at first degree of consanguinity (see table of consanguinity Second Schedule and section 66 of the *Law of Succession Act*) and pursuing the same interest as children of the deceased.
18. The Court takes the view that the appointment of one of the Interested Parties to progress the succession proceedings to the hearing of the Protest and final distribution of the Estate meets the interest of expeditious disposal of disputes in this case, where the central dispute is the right of the protestors as heirs.
19. The Court will, therefore, revoke the grant of Letter of administration to the deceased petitioner, and subsequently appoint the first Interested Party, Kiogora Mutai, as sole administrator of the estate of the deceased herein.



## Orders

20. Accordingly, for the reasons set out above, this court allows the Interested Parties' application dated 16/1/2023 in the following terms:

1. The grant of letters of administration intestate issued to Honesty Kanyua Manyara on 22/10/2018 is revoked.
2. A fresh grant of Letters of Administration shall be issued to the 1<sup>st</sup> Interested Party Kiogora Mutai.

21. The Directions for the hearing of the Protest by the Protestors herein shall be taken on 18/3/2024.

Order accordingly.

**DATED AND DELIVERED ON 29<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances

Mr. Kiiru with Mr. Muthomi J. for the 1<sup>st</sup> Protestor.

Ms. Guserwa for the 2<sup>nd</sup> Protestor.

Mr. Gichunge for the Interested Parties/Applicants.

