



**In re Estate of Jeremiah Kimani Wangire (Succession Cause 523 of 1985)
[2024] KEHC 15475 (KLR) (Family) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 15475 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 523 OF 1985
EKO OGOLA, J
MARCH 19, 2024
IN THE MATTER OF THE ESTATE OF JEREMIAH KIMANI WANGIRE**

BETWEEN

RAPHAEL MURIITHI NGUGI APPLICANT

AND

MARY WANJIRU KIMANI 1ST RESPONDENT

NAFTALI MUTEGI KIMANI 2ND RESPONDENT

RULING

1. The Summons before the court is dated 25th April 2022. The applicant prays for the following orders:-
 - a. That the grant of letters of administration intestate issued herein on 8th October 1986 be deemed to have been annulled and/or revoked due to the death of the administrator.
 - b. That the applicant herein Raphael Muriithi Ngugi be appointed as an administrator to the estate herein for the purpose of administering the parcel of land known as title number LOC. 9/Kiruri/3 only, where the estate of the late Joseph Ngugi Wangire has an interest.
 - c. That the honorable court be pleased to issue such other orders and/or directions that will serve in the interest of justice
 - d. That the costs of this application be provided for.
2. The summons were supported by the applicant's supporting affidavit. The applicant deposed that he is the deceased nephew and his father was the deceased brother. The applicant stated that his father had mental health problems before his health. This necessitated the deceased to take control of the family's ancestral land. According to the applicant, LOC. 9/Kiruri/3 was meant to be registered in his father's



name since he was the eldest son and LOC. 9/Kiruri/671 was to be registered in the deceased name. However, the deceased registered both parcels in his name.

3. The applicant deposed that he has had two meetings with the deceased children in the presence of the area chief, but the issue of ownership of LOC. 9/Kiruri/3 has not been resolved.
4. The applicant further deposed that this court on 23rd November 2017 directed parties to approach the Environment and Land Court to resolve the dispute of ownership of LOC. 9/Kiruri/3. However, before a suit could be filed in the ELC, the administrators of the deceased estate namely, Ruth Wambui Kimani and Paul Thuo Kimani passed away. Consequently, the applicant served a citation to accept or refuse letters of administration to the remaining beneficiaries of the deceased estate, that is, Naphtali Mutegei Kimani and Mary Wanjiru Kimani. There has been no response to the said citation. It is for these reasons that the applicant prays to be substituted as an administrator of the deceased estate.
5. The respondents through the Replying Affidavit of the 1st respondent dated 12th July 2022 opposed the Summons. The 1st respondent deposed that the applicant has no capacity to take up a grant in this matter since his claim is based on trust. Furthermore, if the applicant was appointed as an administrator, he would be suing himself as a legal representative of the deceased. The 1st respondent deposed that the Summons were res sub judice since the applicant filed a Citation in High Court Muranga Citation No. 35 of 2021 seeking orders with respect to the deceased estate.
6. The parties were directed to canvass the application by way of submissions. Parties have complied.

Determination

7. I have read and considered the application, the rival submissions, and the entire record of the court.
8. The first prayer is for revocation of the grant issued on 8th October 1986 to Ruth Wambui Kimani and Paul Thuo Kimani since they have both died. Section 76 of the *Law of Succession Act* provides for the conditions that could cause a grant to be revoked:

“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) ...;

(b) ...;

(c) ...

(d) or

(e) that the grant has become useless and inoperative through subsequent circumstances.”

9. In this case, both administrators have died, therefore, the grant has become useless and inoperative through subsequent circumstances and it is hereby revoked.
10. Prayer (b) is for the applicant to be appointed as an administrator to the estate to administer LOC. 9/Kiruri/3. A grant of representation is made in personam and is not transferrable even after the death of the administrators. This was the holding in the case of *Florence Okutu Nandwa & Another vs. John Atemba Kojwa*, Kisumu Civil Appeal No. 306 of 1998, where the Court of Appeal 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 grant should be made in the usual way, following procedures laid down in the *Law of Succession Act* and the *Probate and Administration (Rules)*...”

11. Since there are surviving beneficiaries to the deceased estate and there is a dispute on LOC. 9/Kiruri/3, an administrator cannot be appointed without following the procedure laid down in the *Law of Succession Act* and the *Probate and Administration Rules*.
12. This file is the main file with regard to the estate of Jeremiah Kimani Wangire. It was instituted in 1985 almost immediately after the death of the deceased in 1984. All litigation with regard to the administration of the deceased estate has happened herein. Therefore, if either party petitions the court for issuance of a fresh grant and if either party wishes to object to that, all should be done in this file. Forum shopping is an abuse of the court process and could necessitate conflicting decisions. The upshot is that prayer (b) of the summons is dismissed.
13. From the foregoing, the summons dated 25th April 2022 is dismissed save for prayer (a). Parties are at liberty to petition the court for issuance of a fresh grant of letters of administration.
14. Costs be in the cause.
Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH 2024.

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E.K. OGOLA

JUDGE

In the presence of:

Mr. Munyambu for the Applicant

Ms. Wangai for the Respondents

Gisiele Muthoni Court Assistant

OGOLA J.

