



**In re Estate of Late Waweru Nuthu Mutuiiri (Succession Cause
E011 of 2022) [2024] KEHC 16359 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16359 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE E011 OF 2022
RM MWONGO, J
DECEMBER 20, 2024**

IN THE MATTER OF THE ESTATE OF LATE WAWERU NUTHU MUTUIRI

BETWEEN

ESTHER WANGITHI MUCHIRI PETITIONER

AND

MILLICENT WANJA WAWERU 1ST RESPONDENT

JANE WANGECHI KIBICHO 2ND RESPONDENT

MARY NALIKA SAKARI 3RD RESPONDENT

RULING

1. The deceased died intestate on 28th August 2021. On 9th May 2022 the Petitioners filed a petition for grant of Letters of Administration intestate. The petition lists eleven beneficiaries including the three wives of the deceased, namely, Esther Wangithi Muchiri, Jane Wangechi Kibicho and Mary Naliaka Sakari.
2. The three wives are named as Petitioners in the petition together with Millicent Wanja Waweru one of the deceased's daughters.
3. The applicant filed a petition under certificate of urgency dated 25th September, 2024 for special limited grant of letters of administration of the estate of the above-named Waweru Nuthu Mutuiiri (Deceased). The grant sought is limited the purpose of disposing off Land Parcel Number Ngariama/Merichi/2981 to settle the deceased's medical bill which now stands at Kshs 2,989,641/=.
4. The application is supported by the applicant's affidavit with the following major averments:
 1. That the deceased Waweru Nuthu Mutuiiri was my husband.



2. That before the death of Waweru Nuthu Mutuiiri he had been admitted at Mater Misericordiae Hospital ailing from Covid 19 related complications.
 3. That the deceased body was detained at Mater Misericordiae Hospital for non- payment of the medical bill which at the time of his death was at Kshs.3,009,641/=.
 4. That the body of the deceased was released to me on 21st December, 2022 for burial despite the pending bill.
 5. That I gave an undertaking to the hospital to be making payments of Kshs. 10,000/= per month which amount is becoming difficult to raise due to the hard economic situation that I am in.
 6. That the remaining balance currently stands at Kshs. 2,989,641/= which the hospital is demanding payment of.
 7. That title to land parcel Number Ngariama/Mirichi/2981 is registered in the name of the deceased Waweru Nuthu Mutuiiri.
 8. That the only way the amount of Kshs.2,989,641/= can be paid is by disposing off an asset from the estate of the deceased to raise the funds.
 9. That the Estate of the deceased is worth over Kshs. 30,000,000/=.
5. The applicant is opposed by the respondents although at the time of the oral hearing, herein, they had not filed any response though they had been served.
 6. The court directed that the matter proceeds for hearing on 5th December, 2024.
 7. The petitioner relied on her petition and supporting affidavit. She submitted that the deceased did not leave funds in his account for payment of the medical bill. She was willing to account for any excess money upon sale of part of the estate of the deceased. She relies on the decision of M. Odero J, in re Estate of Enid Marion Burke (Deceased) (Succession Cause E3155 of 2022) [2023] KEHC 21328 (KLR), where a similar application was allowed and a Special Limited Grant was to be issued.
 8. The respondents object to the application because the applicant did not involve the beneficiaries in making the application. They assert that the said property is where the 1st wife was buried.
 9. The only issue for determination is whether a Special Limited Grant should be issued.

Analysis and Determination

10. The petitioner seeks a special limited grant of the deceased's estate, limited to the purpose of disposing off Land Parcel Number Ngariama/Merichi/2981 to settle the deceased's medical bill which now stands at Kshs. 2,989,641/=.
11. Sections 54 and 67 (1) of the *Law of Succession Act* Cap 160, Laws of Kenya and Rule 36 of the Probate and Administration Rules provide for the circumstances under which a Special Limited Grant may be issued by the court as follows:

“ 54. Limited grants

“A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.”



67. Notice of application for grant

“No grant of representation, other than A Limited Grant for Collection And Preservation Of Assets, shall be made until there has been published notice of the application for such grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.”

36. Grant ad colligenda bona under s.67 of the Act

“Where, owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defuncti of the estate of the deceased.”

“Every such grant shall be in Form 47 and be expressly limited for the purpose only of collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the estate and until a further grant is made.”

12. The petitioner avers that she gave an undertaking to the hospital to be making payments of Kshs. 10,000/= per month which amount is becoming difficult to raise due to the hard economic situation in the Country. She asserts that the remaining hospital bill balance currently stands at Kshs. 2,989,641/= which the hospital is demanding.
13. Further, the applicant states that the only way the amount of Kshs.2,989,641/= can be paid is by disposing off an asset from the estate of the deceased to raise the funds. That is Land Parcel Number Ngariama/Merichi/2981. Reliance is placed on the decision of Odero J, in the case in re Estate of Enid Marion Burke (Deceased) (Succession Cause E3155 of 2022) [2023] KEHC 21328 (KLR): where it was held that a Special Limited Grant be issued to the Petitioner only for purposes of facilitating the sale of the property known as LR Number 209/8336/234. The court referred to the case of the Estate of SMM (Deceased) 2021 eKLR for a description circumstance under which a special grant can be issued.
14. The respondents object to the application because the applicant did not involve the beneficiaries in making the application. They state that the same property is where the 1st wife is buried but have availed no evidence of that fact.
15. The petitioner deposed that in the year 2021, the respondents herein had made a similar application for the same property before the court which was declined for want of jurisdiction. A copy of the certificate and summons dated 29th October 2021 was exhibits as “EWM 4”.
16. The petitioner undertook to pay the deceased medical bill. However, respondents have not offered to contribute in the payment of this amount outstanding in the medical bill of the deceased.
17. In re Estate of SMM (Deceased) [2021] eKLR, Muriithi J held: The amount authorized to be withdrawn by the special limited grant shall be taken into account at the point of ascertaining the amount or share of the estate eventually distributed to the applicant and her children. Further he stated



that any further dealing with the estate of the deceased must be with the authority of the court granted in this cause or upon full grant of representation. In that case the Judge directed as follows:

- “ 1. A special limited grant is made to the applicant, JMM for the purposes of accessing the deceased’s account at Equity bank A/C NO. [Particulars Withheld] and to withdraw therefrom a total sum of money being Ksh.52,400/- for the payment of schools fees respectively for BK at [Particulars Withheld] High School at Ksh.17,800/-; for the payment of school fees for TK at [Particulars Withheld] Primary School at Ksh.14,600/- and for their upkeep and school related expenses at Ksh.20,000/-.
2. The special limited grant does not authorise any other withdrawal of any other sums of money from any other of the deceased’s bank accounts or the dealing with any other property of the deceased.
3. Costs in the cause”

Conclusion and Disposition

18. The petitioner has submitted that she was willing to account for any excess money upon sale of part of the estate of the deceased.
19. Balancing the parties’ rights and obligations, and taking all matters into consideration, I hereby allow the Petitioner’s application on the following terms:
 - a) A Special Limited Grant be and is hereby issued to the Petitioner limited only to the purposes of facilitating the sale of the property known as Land Parcel Ngariama/Merichi/2981.
 - b) The whole proceeds of sale of the said land shall be disclosed to the Court and to all parties.
 - c) The said sale proceeds shall be utilized ONLY for the payment of the medical/hospital bill of the deceased with Mater Misericordiae Hospital shown in the Statement of Account annexure “EWN2” as may be updated by the said hospital.
 - d) The applicant shall account for all the proceeds of sale to the Court within thirty (30) days of the sale authorized hereby.
20. Costs shall be borne by the estate.
21. Orders accordingly.

DELIVERED AT KERUGOYA THIS 20TH DAY OF DECEMBER, 2024

R. MWONGO

JUDGE

Delivered in the presence of:

1. Makworo - for Applicants
2. Peter Waweru - Son of 1st Wife - Catherine Wangui
3. Samuel Waweru - Son of the 2nd Wife Esther Wangithi
4. No representation - for 1st - 3rd Respondents
5. Mr. Murage, Court Assistant

