



**In re Estate of Enid Marion Burke (Deceased) (Succession Cause  
E3155 of 2022) [2023] KEHC 21328 (KLR) (Family) (9 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21328 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E3155 OF 2022  
MA ODERO, J  
AUGUST 9, 2023**

**BETWEEN**

**GILLIAN ELENORE RHEA BURKE ..... PETITIONER**

**AND**

**JAMES ALLEN CARL BURKE ..... OBJECTOR**

**RULING**

1. Before this Court is the Petition for a Special Limited Grant dated September 7, 2022 filed by the Petitioner Gillian Elenore Rhea Burke. The Petitioner sought the Limited Grant to enable her sell the property known as land Reference Number 209/8336/234 in order to raise funds to cater for the outstanding costs and liabilities of the estate of the Deceased.
2. The Petition was opposed by the Respondent James Allen Carl Burke who is a brother to the Petitioner and a beneficiary to the estate. The Respondent filed an objection dated November 15, 2022.

**Background**

3. This matter relates to the estate of Enid Marion Burke (hereinafter ‘the Deceased’) who died intestate on June 25, 2022 at the Diani Beach Hospital. The Deceased was survived by her daughter Gillian Elenore Rhea Burke (the Petitioner herein) and a son, James Allen Carl Burke (the Respondent)
4. Following the demise of the Deceased the Petitioner filed a Petition for Grant of letters of Administration Intestate dated September 7, 2022. The Petitioner also filed the instant Petition for a Limited Grant.
5. The Petitioner states that there are urgent pending bills and pre-existing loans relating to the estate which need to be settled. She also states that the estate requires funds to cater for the upkeep and costs of maintaining her brother (the Respondent) who due to alcoholism requires rehabilitation.



6. As stated earlier the Respondent opposed the Petition for a Special Limited Grant. The matter was canvassed by way of written submissions. The Petitioner filed the written submissions dated January 10, 2023. The Respondent filed the written submissions dated February 20, 2023.

### **Analysis and Determination**

7. I have carefully considered the Petition for Special Limited Grant, the Objection filed thereto as well as the written submissions filed by the Plaintiff.
8. Section 54, 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

- (1) 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

1. 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.
2. Every such grant shall be in Form 47 and be expressly limited for the purpose only of collecting and getting in a 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.”

9. The Petitioner avers that the estate is devoid of any liquid funds. Yet there are various costs and expenses to be met which include pre-existing loans, debts payment of salaries, land rates, as well as rehabilitation costs for the Respondent who is a beneficiary of the estate.
10. The Petitioner states that at present time she has been forced to use her own resources to cater for estate expenses which situation is no longer tenable and places a heavy burden on her.
11. In his Objection the Respondent denies that he is an alcoholic and denies that he requires any rehabilitation. The Respondent instead accuses the Petitioner of intermeddling with the estate. He urges the court to dismiss this Petition.



12. *In Re Estate Of Smm (Deceased)* [2021] eKLR, the court set out the circumstances under which a Special Limited Grant may be issued as follows:-

“Such Letters of Administration shall authorize the Applicant to do the following acts:

1. Carry out an Inspection and Audit of the firm to ascertain how many files/clients with matters pending are on the firm’s books;
2. Contact those clients and inform them that he will manage and run the firm until such time that it is appropriate to wind it up;
3. Access the Bank Accounts of the firm limited to Client Accounts and Office accounts as set out in the Application;
4. Pay salaries to existing employees of the firm that is those that were employed before the Deceased passed away; [own emphasis]
5. Pay outstanding utility bill and overheads including rent and service charges. [own emphasis]
6. Wind up the firm within a reasonable period.
7. ....”

13. In as much as the Respondent denies needing any rehabilitative treatment the Petitioner has annexed copies of invoices from Eden House Foundation in respect of treatment received by the Respondent James Burke.

14. It would be unfair to expect the Petitioner to continue meeting the estate expenses as well as costs relating to the Respondent. The duty of this Probate Court is to ensure that the estate is preserved pending the full distribution of the same.

15. In order to ensure the continued smooth running of the estate of the Deceased I invoke the powers vested in this court by Rule 73 of the *Probate and Administration Rules* and make the following orders:-

- (i) That a Special Limited Grant be and is hereby issued to the Petitioner Only For Purposes of facilitating the sale of the property known as LR Number 209/8336/234.
- (ii) The proceeds of sale to be paid into a joint interest earning account opened in the name of Counsel for both the Petitioner and the Respondent.
- (iii) The said proceeds of sale to be utilized ONLY for the maintenance of the estate and payment of outstanding expenses.
- (iv) This being a family matter I make no orders on costs.

**DATED IN NAIROBI THIS 9<sup>TH</sup> DAY OF AUGUST, 2023.**

.....

**MAUREEN A. ODERO**

**JUDGE**

