



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

AD LITEM NUMBER 12 OF 2018

IN THE MATTER OF THE ESTATE OF THE

LATE PETER MURAYA CHEGE (DECEASED)

AND

IN THE MATTER OF AN APPLICATION FOR GRANT OF

LETTERS OF ADMINISTRATION “Ad Colligenda Bona” BY:-

MARGARET WAIRIMU MURAYA.....PETITIONER/APPLICANT

VERSUS

MARY WANJA KARWE.....1ST RESPONDENT

PAULINE WANGUI MUCHIRI.....2ND RESPONDENT

ROSEMARY WAIRIMU MURAYA.....3RD RESPONDENT

CHRISTINE WANJIRU DOGO.....4TH RESPONDENT

JOHN KAMAU MURAYA.....5TH RESPONDENT

FRANCIS NGUMI (FRANCO).....6TH RESPONDENT

JAMES MUGO.....7TH RESPONDENT

DANIEL MURIGA.....8TH RESPONDENT

JOSEPH GATURO (TUSH).....9TH RESPONDENT

RULING

1. A full grant of letters of administration intestate has now been issued to John Muthee Ngunjiri, James Macharia Chege and James Mugo Muraya.

2. **Rule 36** of the **probate and administration rules** provides;

Rule 36 provides;

“S. 36. (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 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.

(3) Application for such a grant shall be by petition in Form 85 signed by the applicant in the presence of not less than two adult witnesses supported by an affidavit containing the material facts together with the reasons for the application and showing the urgency of the matter and shall be made at the principal registry or at the Mombasa, Kisumu, Nakuru, Nyeri, Kisii, Kakamega, Meru, Machakos, Eldoret and Bungoma registries.

(4) The provisions of rule 7 (4) shall not apply to applications under this rule.

(5) Copies of the proceedings and of the grant when issued shall be served upon such persons (if any) and in such manner as the court shall direct.”

3. The application herein dated 12/11/2018 sought the issuance of a Limited Grant of Letters of Administration *ad colligenda bona* for the administration of the estate of Peter Muraya Chege for preservation of the same until further representation be granted.

4. There is now a full grant issued to the three (3) administrators named above and whose duty it now is within the provisions of **Section 82** and **83** of the **Law of Succession Act** to deal with all aspects of the estate.

5. Granted, some parties, the applicant included may wish to challenge the grant. Elaborate legal mechanisms exist for doing that.

6. Until such challenge is mounted with success, the grant issued herein remains legal and regular.

7. The law does not envisage a situation where a limited grant is to run alongside a full grant. **Rule 36** of the **probate and administration rules** is unambiguous. A limited grant is to issue pending a full grant.

8. So, should I now deliver the ruling on the present application which ruling was to either grant a limited grant or deny it?

9. Counsel for the applicant strongly believes that the full grant issued is contrary to earlier directions of court. The administrators are very low in the degree of consanguinity. The respondents have stolen a march against the applicant.

10. With profound respect to counsel, all these grouses should be raised at the challenge of the grant at the right forum.

11. In the obtaining circumstances, a reading of the court’s ruling that was scheduled for today would be a futile act. Any orders, even assuming positive ones allowing the subject application would be orders in vain. They would certainly be superseded by the full grant.

12. In the premises and in view of the changed circumstances therefore, I am satisfied that the pending application dated 12/11/2019 is overtaken by events and no ruling on the same is necessary. This file is deemed closed.

Dated and Delivered at Nakuru this 28th day of February, 2019.

A. K. NDUNG’U

JUDGE