



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Joseph Kimeto Kirwa (Deceased) (Ad Litem Succession Cause E030 of 2025) [2025] KEHC 2165 (KLR) (10 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2165 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

AD LITEM SUCCESSION CAUSE E030 OF 2025

RN NYAKUNDI, J

FEBRUARY 10, 2025

IN THE MATTER OF THE ESTATE OF JOSEPH KIMETO KIRWA (DECEASED)

IN THE MATTER OF

EVERLYNE JEMUTAI KIRWA PETITIONER

RULING

1. This is a petition for special grant by Everlyne Jemutai Kirwaseeking for a special Limited Grant of Letters of Administration of the estate of the late Joseph Kimeto Kirwa- domiciled in Kenya and died on September 22, 1981 at home for the sole purpose of instituting suit seeking temporary orders of injunction against all the trespassers, beneficiaries and/or their assigns restraining them from intermeddling, interfering, trespassing onto and/or in any way dealing with the deceased's properties belonging to the estate of the late Joseph Kimeto Kirwa (deceased) and without power of distribution of the estate. The petition is based on the following grounds:
 - i. I intend to institute a civil suit on behalf of the estate of the deceased
 - ii. I present this petition in my capacity as the son of the deceased
 - iii. That a grant of administration ad litem do issue limited for the purposes of instituting a civil suit.
 - iv. That I have no power to distribute an estate under this grant under the Grant
2. The framework of the law regarding special forms of grants- in this case grants of administration limited to suit i.e ad litem grants-is the fifth schedule paragraph 14 of the LSA which provides as follows: “When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any



other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.”

3. In support of the Application is an affidavit sworn dated 22.1.2025 constituting prima facie evidence to be relied upon by this court to exercise discretion in favour of the Applicant. In addition to the 5th schedule paragraph 14 of the *Law of Succession Act* this court invokes Section 54 & 67 of the Act which donates powers grant of special grants of representation. Section 54 states that “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 of this Act.”
4. In light of the foregoing, the following declaration be and is hereby made:
 - a. That letters of grant ad litem be issued to the Applicant limited to the intent and purposes of prosecuting or defending any such suit which may be existing or to be initiated for the very purpose of preserving the interests and rights arising out of the estate properties which may be at risk of dissipation, wastage, unlawful transmission or conveyance before full grant of letters of grant of representation under Section 66 of the Act.
 - b. Costs of this application be in the cause.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 10TH FEBRUARY, 2025

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R. NYAKUNDI

JUDGE

