



REPUBLIC OF KENYA



KENYA LAW
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**Atieno & another v Murila (Civil Appeal E431 of 2023)
[2025] KEHC 3462 (KLR) (Civ) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3462 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E431 OF 2023

LP KASSAN, J

MARCH 6, 2025

BETWEEN

MILLICENT ATIENO 1ST APPELLANT

**ESTHER WANJIKU KIRONYO (SUING AS PERSONAL REP OF THE ESTATE
OF STEPHEN OMONDI - DECEASED) 2ND APPELLANT**

AND

ANDREW TEDDY MURILA RESPONDENT

*(Being an appeal from the judgment of Hon. R.L. Muirega/R. Liluma (Mr) (SRM)
delivered on 28th April, 2023 in Nairobi Milimani Commercial CMCC No. E6371 of 2018)*

JUDGMENT

1. The Deceased, represented by the Appellants, was a pedestrian walking along Maji Mazuri-Mwiki road on 1st March 2016 when the Respondent driver or his authorized driver of motor vehicle registration number KBV 435W hit the Deceased causing an accident which occasioned fatal injuries to him. The Appellants filed a suit against the Respondent claiming damages under the *Law Reform Act* (Chapter 26 of the Laws of Kenya) and the *Fatal Accidents Act* (Chapter 32 of the Laws of Kenya) and Kshs 63,000/= for special damages.
2. The trial magistrate dismissed the claim under the *Fatal Accidents Act* as under the law the Appellants did not qualify as dependents. Further, the trial magistrate found that the Appellants had no locus standi and dismissed the claim under the *Law Reform Act* as well as special damages. The suit was dismissed with costs to the Respondents.
3. It is the aforesaid award that has precipitated this appeal. The grounds of appeal are set out in the memorandum of appeal dated 26.05.2023. In summary, the grounds are that



- I. The Learned magistrate erred in law and in fact in failing to acknowledge that the Appellants herein had locus standi to institute the suit.
 - II. The Learned trial magistrate erred in fact and in law by failing to award damages under the [Law Reform Act](#) and the Special damages as pleaded.
 - III. The Learned magistrate misdirected himself factually and legally, hence the judgment is an affront to justice. The dismissal of the entire suit with costs was erroneous.
4. The essence of the Appellants' submissions was that they had the locus standi to initiate the suit underlying this appeal by virtue of the grant ad litem issued on 16th October 2017.
- Counsel for the Appellants further submitted that nothing bars the listed dependents from benefitting under the [Law Reform Act](#), not forgetting the award of special damages which were pleaded and proved on balance of probabilities. Appellants relied on the authorities of *Mutiso v Patel* (Civil Case E008 of 2021) [2022] KEHC 11783 (KLR) (18 July 2022) (Ruling), *HCCA 242 of 2017*, *Rottger v Dusa & Ano.* (Suing on behalf of the Estate of Wilson Baya Thoya-Deceased) (Civil Appeal 063 of 2023) [2023] KEHC 26630 (KLR) (18 December 2023) (Judgment).
5. The Respondent supported the decision of the trial magistrate. Their counsel submitted that the Appellants had locus standi to institute a suit as representatives of the deceased person, they lacked the locus to receive any proceeds on their own behalf or on behalf of the deceased person's estate. That the grant issued to the Appellants was limited only to purposes of filing suit. That this court should consider the precise wording and specific contents of the grant issued to the Appellants. That without the locus to represent the deceased's estate then there could be no claim under the [Law Reform Act](#) and for special damages. The Respondent relied on the authorities *Alfred NjauvCity Council of Nairobi* [1983] KLR 625, *Gabriel Macharia Njoroge v ABSA Bank Kenya PLC* [2021] eKLR, *Lydia Ntembi Kairanya & ANo.v Attorney General* [2009] eKLR, *Hussein Omar FararvLento Agencies C.A. Nairobi, Civil Appeal No. 34/2005* [2006] eKLR and *Maritim & Ano.vAnjere* [1990-1994] EA 312.
6. Both parties agreed to canvass the appeal through written submissions which I have reviewed. The issues raised in this appeal are:
- i. Whether the trial magistrate's finding the Appellants had no locus standi was erroneous?
 - ii. Whether the Appellants were entitled to an award under the [Law Reform Act](#) and an award for special damages?
 - iii. Who is to bear the costs?
7. The court has considered the rival submissions and the record of the court below. In *Selle v Associated Motor Boat Co.* [1968] EA 123 the Court of Appeal for East Africa laid down the principles guiding the exercise of the jurisdiction of the first appellate court. The court stated:
- “An appeal to this Court from the trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court in not bound necessarily to follow the trial Judges findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities or materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the



evidence in the case generally (Abdul Hamid Saif v Ali Mohamed Sholan[1955] 22 EACA 270).” See also Peters v Sunday Post Limited [1958] EA 424; Williams Diamonds Limited v Brown (1970) EA. 1.

8. The Court of Appeal in Ephantus Mwangi and Another v Duncan Mwangi Wambugu [1982] – 88) IKAR 278 stated that:

“A court of Appeal will not normally interfere with a finding of fact by the trial court unless it is based on no evidence or on a misapprehension of the evidence or the Judge is shown demonstrably to have altered on wrong principles in reaching the findings he did”

9. In considering the issue of locus standi, the trial magistrate held as follows:

“Having considered the authorities above, I can help but agree with Ms. Wambua Counsel for the defendant that, since the ad litem granted by Hon. Omodho on 16th October 2017 only allowed the plaintiff to file the suit and do nothing else, the claim under the Law Reform Act fails.”

1. Sections 54 of the Law of Succession Act provides:

“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.”

2. The Fifth Schedule, section 14 of the Law of Succession Act states 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. Section 55 (1) Law of Succession Act states:

“No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets, or to make any division of property, unless and until the grant has been confirmed as provided in section 71.”

4. Under Section 3 (1) of the said Act, a personal representative is defined as “executor” or “administrator” of a deceased person. The duties of personal representative are defined under Section 82 of the Act. It is provided:

“Personal representative shall subject only to any limitation imposed by their grant, have the following powers:



- a. To enforce by suit or otherwise, all causes of action which by virtue of any law, survive that the deceased or arise out of his death for his estate;
- b. To sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties all or any part of the assets vested in them, as they think best: provided that.....”

10. The above provisions are clear that a limited grant is typically issued in response to urgent matters concerning the estate that cannot await the issuance of a full grant through the usual process. It is granted without prejudice to the rights of any other person to apply for a full grant of representation. Consequently, a limited grant is not subject to the same strict compliance requirements as a full grant of representation. Furthermore, the holder of the limited grant undertakes to administer the estate in accordance with the law, but only within the specific purpose for which the grant was issued, until the court issues a further grant of representation.

11. Section 79 of the said Act provides:

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”

12. From the aforementioned, it is clear that the Appellants’ Special Limited Grant ad litem was strictly for purpose of instituting a suit against the Respondent. The Appellants required the authority from the grant of letters of Administration Ad Litem to file the suit.

13. Rule 73 Probate and Administration Rules gives Court inherent powers to make orders in the interest of justice or to prevent abuse. The rule imposes a duty on the Court to make orders to protect from waste or to preserve the estate of a deceased. The court is not toothless in the event of abuse.

14. In the case of the estate of Helena Wangechi Njoroge (Deceased) [2015] eKLR the Court held the following concerning letters of administration ‘ad litem’;

“Section 79 vests the property of the deceased in the personal representative, so that the latter can then exercise the powers set out in Section 82 and discharge the duties set out in Section 83 of the Act. It should be pointed out that that the provisions in Section 82 can only be fully exercised by a substantive administrator that is the person holding, not a limited grant, but a full grant. Likewise, the duties imposed by Section 83 are to be discharged to their fullest by the holder of a substantive grant of representation.....”

It was limited to the purpose of filing suit to preserve the three assets of the estate. It is what is called a grant of letters of administration ad litem. The suit envisaged to be filed on the strength of a grant ad litem is not a probate or succession case, or an interlocutory application within a probate or succession cause, but rather a civil suit. Indeed, one need not obtain a grant of any sort to enable him file a succession cause. A grant of representation is only necessary where one intends to file a civil suit to protect or defence the estate against third parties.”



15. The trial court was persuaded, by the authority of *Lydia Ntembi Kairanya and Another v AG* [2009] eKLR, that the grant ad litem on whose authority the claim under the *Law Reform Act* was brought did not suffice. And that the Appellant required a full grant as stated in that authority, to succeed in a claim brought under the *Law Reform Act*. The grant upon which the Appellant herein relied on was a grant ad litem issued under Section 54 of the Laws of Succession Act and the First Schedule.

16. The grant in the form Ad Litem Form 90B was issued on 16.10.2017. The content of the said grant is that:

“Be It Known that letters of administration ad litem of all the estate of the above-named Stephen Omondi (Deceased) who died domiciled in Kenya on the 01/03/2016 which devolves to and vests in his Personal Representatives but limited to the purposes only for filing suit, and until further representation were granted by this court to Esther Wanjiku Kironyo & Millicent Atieno of P.O. Box 45602-00100, Nairobi he/she having undertaken to administer such estate according to law (limited as aforesaid) and until further representation be granted and render a true and just account thereof whenever required by law to do.”

17. It is evident that the Plaintiff in the case of *Lydia Ntembi Karanya* had also obtained what was described as a Limited Grant of Letters of Administration Ad Litem in June 2007. The court however did not consider the said grant suitable and adequate for the purpose of filing and prosecuting the suit in that case and held that a full grant was necessary for that purpose.

18. In the case of *Priscilla Njeri Wamiti & 2 Others v Shiku John Company Ltd* [2017] eKLR, the court dealt with a similar issue where the lower court dismissed the appellant’s suit on the grounds that the appellant lacked the capacity to prosecute the suit, as the Limited Grant of Letters of Administration Ad Litem was restricted to filing but did not extend to prosecuting the suit.

19. I associate myself entirely with and will liberally replicate the sentiments of *Kasango J* in that case. The learned Judge observed that:

“On the second issue, the appellants were issued with a limited grant of letters of administration Ad Litem. It was on the basis of that letters of administration that the appellants filed the civil suit seeking compensation for the death of the deceased. The case upon which the trial court relied upon to find that the appellants had no capacity to prosecute that suit, namely *Lydia Ntembi*(supra) which was a High Court decision, is at variance with the Court of appeals decision of 24th October 2013 in the case *JOel Muga Opija v East African Sea Food Limited* [2013] eKLR. From that decision of the court of appeal it is clear that prior to *Legal Notice No. 39 of 2002* the Limited grants that were issued were as per Form 47 of the Forms in the Probate And Administration Rules (herein after referred to as the Rules). That Form 47 is granted as provided under Rule 36 (2) of the Rules, which Rule provide for special circumstances of urgency which urgency could not wait for court to make full grant and which provides:

“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.”...

Legal Notice 39 of 2002 however, provided for issuance of letters of Administration Ad Litem. The Form under which letters of Administration Ad Litem were to be issued is Form



(90)B. Under that Form Limited Letters of Administration Ad Litem could be issued for the purpose of filing suit and until further representation were granted by the court.

In the case Joel Muga Opija (supra) The justices in that case were facing a ground of appeal very similar to the one before me. The ground of appeal they were considering was whether.

“The Learned Judge of the Superior Court erred in law in holding that appellant herein had no locus standi to file the original suit by rejecting exhibit 5 (Limited Grant of Letters of Administration) When it was expressly endorsed thereon that the said grant was for filing suit.”,

20. The Judges of the Court Appeal made the following holding in respect of that ground

“We will consider the issue of status first. The main reason why the learned Judge sustained the respondent’s arguments on this issue is that the form used and its contents limited the Appellants to “collect, get and receive” the estate and doing such things as may be necessary for the preservation of the same until further presentation be granted. She rightly in our view considered that as a very limited grant which did not authorize the respondent to institute or defend any claims on behalf of the estate of the Deceased. Mr. Okoth responds to that by submitting that at the relevant time when the accident happened that Form P & A 47 was the form used for purposes of instituting and defending claims such as was made in this case. He says that the separate forms now in use came into use much later. The accident took place on 16th June, 2001. That is not in dispute. The deceased died on that same day according to the evidence which includes Certificate of Death produced as exhibit. Section 67 (1) of the Law of Succession was clear that no presentation, other than a limited grant for collection and presentation of assets, could be made until there had been published Notice of the application for the Grant. Form 47 used here was undoubtedly that for limited grant and ideally was not a suitable Form for grant that would authorize a person to sue or to defence a suit on behalf of the estate of a Deceased person. However, Rule 70 of the Probate and Administration Rules states:

“The Forms set out in the First Schedule with such adaptations additions and amendments as may be necessary, shall, when appropriate be used in all proceedings under these rules.

Provided that the Chief Justice may by Notice in the Gazette vary the forms and prescribe such other or additional forms as he thinks fit.”

A look at the first schedule indicates that Form 47 is one of such forms which could be used with variations as appropriate. Thus before the Chief Justice gazette a varied form, applicants could use Form 47 as appropriate for all proceedings under the rules. This continued till Legal Notice No. 39 was introduced under the Probate and Administration (Amendment of the fifth schedule Rules) 2003, and a proper form was introduced. This was long after the death of the Deceased and indeed after the Appellant had applied for Letters of Administration under the old provisions.

We think that had the attention of the Learned Judge of the High Court been drawn to the above, and to the fact that the Learned Magistrate had in a ruling allowed the use of form for filing the case, she would have come to the same conclusion she came to in her judgment. We are persuaded that that ground was well taken.”

“That decision of the Court of appeal in my view sufficiently responds to Appellants’ ground of appeal on locus standi. A party can where the Limited Grant so authorizes file suit or defend suit on behalf of a deceased person. This is so since [Legal Notice No. 39 of](#)



2002 authorised the limited letters of administration Ad Litem to file suit. The appellants had obtained Limited Letters of administration Ad Litem. That letter as per Legal Notice No. 39 of 2002 authorized appellant to file their suit.”

21. In my view, the Court of Appeal’s holding in the Joel Muga case leaves no doubt that a claimant suing under the Law Reform Act on behalf of a deceased person only requires a limited grant ad litem to establish locus standi, rather than a full grant, as was held in the Lydia Ntembi’s case. Consequently, I am convinced that the trial court erred in its determination on this issue, and I accordingly allow the first ground of appeal.
22. The court did not examine the issues of liability, the awards under the Law Reform Act, or special damages, as it erroneously concluded that the Appellants lacked locus standi, which was not the case.
23. Accordingly, I make the following orders:
 - i. The judgment delivered on 28.04.2023 is set aside.
 - ii. The matter is remitted back to the lower court for purposes of a new trial before a different Magistrate.
 - iii. The costs of this appeal will abide by the outcome of the new trial.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF MARCH 2025.

L. KASSAN

JUDGE

In the presence of:-

No appearance for the Appellant

Mwaniki for the Respondent

Carol – Court Assistant

