



REPUBLIC OF KENYA



**In re Estate of Martin Joel Ekitela (Deceased) (Probate & Administration  
E007 of 2025) [2025] KEHC 6264 (KLR) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6264 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
PROBATE & ADMINISTRATION E007 OF 2025**

**EN MAINA, J**

**MAY 12, 2025**

**IN THE MATTER OF THE ESTATE OF MARTIN JOEL EKITELA (DECEASED)**

**IN THE MATTER OF**

**CHRISTINE CHETENGA CHEMENGU ..... PETITIONER**

**RULING**

1. The deceased to whose estate these proceedings relate is Martin Joel Ekitela who died on 2<sup>nd</sup> April 2023 domiciled in Lokitaung.
2. The application before this court is a petition for special limited grant filed under a certificate of urgency dated 22<sup>nd</sup> January 2025. The gist of the summons is that there is an urgent need for provision of school fees, other school related expenses, healthcare for the minor children in the estate and for payment of medical bills and upkeep for the Petitioner and the children. The limited grant is also purported to be for the purpose of collecting and managing the rental income of the estate.
3. The application is brought under Section 54 of the *Law of Succession Act*, Rule 36 of the Probate and Administration Rules, 5<sup>th</sup> schedule, Article 53 of *the Constitution* of Kenya and Sections 8,13,16 of the Children's Act.
4. The Petition is supported by an affidavit sworn by the Petitioner on 22<sup>nd</sup> January 2025 in which she deposes that she is the wife of the deceased. That they were blessed with two children namely, Nelson Lodepe Ekitela and Martin Ekitela Junior who are minors and in school at SFS Schools Katani; that she is overstretched with the bills which include the house rent, electricity and water bills, house help expenses all amounting to Kshs 150,000 per month; that delay in bringing this application was caused by the chief's refusal to write her a letter requisite for bringing succession proceedings; that she is recuperating from a stroke she suffered 10 years ago which costs her insurance premium in the sum of Kshs 180,000 per year. She also deposes that the children risk being sent away from school for lack of school fees and that the workers of the estate require to be paid.



5. The Petitioner is represented by Mr Ouma Advocate duly instructed by the firm of Ekons Law Advocates. In his written submissions Mr. Ouma states that the Applicant requires the grant to access funds for urgent needs and also for collecting and preserving the rental income which accrues to the estate from a development on LR NO 23406(IR NO 108217) belonging to the deceased; that there is money in bank accounts held at the National Bank, ABSA Bank and Kenya Commercial Bank; that the current application does not seek to cover the whole estate but merely to address the urgent needs. Further, that the rights of the children to education is compromised and the longer the deadlock persists, the more their best interests are neglected contrary to their constitutional right to education. In support of his submissions Counsel placed reliance on the following cases--Re Estate of SMM (Deceased) [2021] eKLR.-Re estate of CFP III [2015] eKLR.-Re Estate of Daniel A. Korir Kipkurui(Deceased)[2021]eKLR.
6. The Petition was, as is the norm in such applications, made *ex parte* and is therefore not opposed.

### **Analysis and determination**

6. I have carefully considered the petition, the grounds on its face thereof, the facts deposed to in the supporting affidavit, the annexures, the submissions of Counsel, the cases cited and the law.
  7. This court is alive to its power vested by Section 54 of the *Law of Succession Act* to issue limited grants. The section states -

“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.”
  8. In the case of intestacy the nature of limited grant that will usually be issued by the court is a limited grant *ad Litem* for purposes of filing suits or representing deceased persons estates in suits and grants *ad colligenda bona* for purposes of collecting and collating the assets and preserving them pending issue of a full grant otherwise Section 67(1) of the *Law of Succession Act* prohibits the grant of other forms of grants before the same have been gazetted by way of a notice inviting objections. This section states-

“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.”
  9. Even upon being issued with a limited grant the administrator does not acquire any rights to distribute the estate. The nature of the application made herein if granted would have the effect of drawing money from the bank accounts of the deceased which is akin to distributing the estate before the petition is gazette and objections invited which is contrary to the law and the Probate and Administration Rules. It cannot therefore be allowed and in the premises, it is dismissed. Let the Applicant petition for a full grant which I believe would have been granted in the same period of time as it took to bring this application.
- Orders accordingly.

**RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 12<sup>TH</sup> DAY OF MAY 2025.**

**E N MAINA**



## **JUDGE**

In the presence of:

Mr. Ouma for the Applicant/Petitioner

Geoffrey – Court Assistant

