



REPUBLIC OF KENYA



**In re SPJ Mungai Gitahi (Deceased) (Succession Cause E283 of 2025)
[2025] KEHC 8655 (KLR) (Family) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8655 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E283 OF 2025
CJ KENDAGOR, J
JUNE 11, 2025
IN THE MATTER OF THE ESTATE OF LATE S.P.J
MUNGAI GITAHI ALIAS SIMON P. MUNGAI GITAHI
(DECEASED)
PETITION FOR SPECIAL LIMITED GRANT
PRESENTED BY MICHAEL GITAHI MUNGAI AND
JENNIFER WANJIKU MUNGAI – PETITIONERS**

RULING

1. The Petitioners have submitted a petition for a special limited grant in their capacity as the children of the deceased. According to the petition, this special limited grant is requested specifically to permit the disposal of a single property belonging to the estate, identified as Title Number Kwale/DianiBeach/1365.
2. The grounds stated in the petition indicate that the sale is urgent to cover the urgent necessities of the estate.
3. The liabilities were listed and included as urgent necessities, justifying the issuance of the special limited grant:
 - I. Medical bill loans taken out by the deceased to cater for his hospital bills;
 - II. Debts advanced to deceased by friends on friendly terms when the deceased was unwell;
 - III. Legal fees to institute probate proceedings;
 - IV. Pending utility bills in the deceased's household, and
 - V. Pending legal fees from an unsettled case involving the estate of the deceased.



4. The Petitioners listed the following assets as the inventory belonging to the deceased;
 - I. Kwale/Diani Beach/1365;
 - II. Kwale/ Diani Beach Block/1364;
 - III. Kwale/Diani Complex/342;
 - IV. Tana River/Witu/211;
 - V. Kwale/Galu Kinondo/1587;
 - VI. Kijabe/Kijabe Block 1/26628 (Maai mahiu)
 - VII. Kiambaa/Thimbigua/174
 - VIII. LR No 1160/920 (Original No 1160/349/2) IR 108320;
 - IX. Plot No 105, Scheme Olbollosat.
5. During the Court examination, the petitioners, along with their brother Stephen Kinuthia Mungai, stated that they had all consented to the petition. The 1st Petitioner pointed out that the documents mistakenly suggested that the deceased had left a valid will, when in fact there was none. Counsel for the Petitioners also indicated as much.
6. I have reviewed the petition together with the supporting affidavits and the annexures thereto. As a general principle of the law of succession, grants may only be made with notice under Section 67 of the [Law of Succession Act](#), which states as follows:
 - “ 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.”
7. A special limited grant is issued under Rule 36 of the Probate Rules in exceptional circumstances where the urgency of the matter is so great due to special circumstances that it would not be possible for the Court to grant full representation to the person entitled by law, in sufficient time to meet the necessities of the case.
8. The Petitioners and Stephen state that they are the sole beneficiaries. The deceased passed away on 28th December, 2024 according to the death certificate on record. The petitioners attached a copy of the title as proof of ownership for the property in question, along with other title documents.
9. The chief’s letter dated 19th March, 2025 does not indicate whether the deceased was married or not. It only shows the three as the heirs to the estate.
10. Upon further scrutiny of some of the title documents, I noted that several properties are registered in the name of the deceased and one Rhoda Wangari Mungai, who is not mentioned in the petition.
11. The Petitioner did not provide proof of the information below;
 - I. There are no annexures to support any urgency;



- II. There is no proof of the outstanding medical bills or the alleged debts owed to friends;
 - III. There is neither a description nor evidence of the pending utility bills;
 - IV. There is no proof of any pending legal issues from what is indicated as an unsettled case involving the estate.
- 12. The Petitioners are not seeking a special limited grant for collection and preservation. The enumerated necessities are not so urgent that a special grant of the nature sought must be issued before the grant of representation.
 - 13. The petition for a full grant of representation has not been presented, and no notice has thus been issued for publication in the Kenya Gazette. Even if the petition had been filed and a grant issued, the Law of Succession restricts the sale of any property belonging to the estate until the grant of representation is officially confirmed. This is to ensure the interests of beneficiaries or any interested parties, where such exist, are protected during the probate process.
 - 14. The deceased died in December, 2024, and if there was genuine urgency, the cause would have been presented much earlier. The duration is nearly the complete time needed to finalize a full grant of representation.
 - 15. The subject property they seek to sell is in Kwale, Diani; thus, it is important to note that, since the property is not in Nairobi, where the cause has been filed, a notice of the petition would be crucial.
 - 16. After careful consideration, I do not find any compelling urgency or exceptional circumstances that would justify issuing a special limited grant to allow the sale of the estate's property prior to the formal submission and determination of the petition for letters of administration. In the absence of such urgent needs or unique situations, it is appropriate to adhere to the standard process of the law of succession.
 - 17. The petition for a special limited grant dated 3rd April 2025 is not merited and is dismissed.
 - 18. Parties are at liberty to move the Court as may be appropriate.
 - 19. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 11TH DAY OF JUNE, 2025.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Mutava J., Advocate for the Petitioners

