



**In re Estate of FMW (Deceased) (Succession Cause E313 of 2025)  
[2025] KEHC 10851 (KLR) (Family) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10851 (KLR)

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

**FAMILY**

**SUCCESSION CAUSE E313 OF 2025**

**CJ KENDAGOR, J**

**JULY 22, 2025**

**IN THE MATTER OF THE ESTATE OF FMW (DECEASED)**

**BETWEEN**

**SKM ..... PETITIONER**

**AND**

**CAROL MAKELE AMAYI ..... 1<sup>ST</sup> OBJECTOR**

**WENDY WANGUI ..... 2<sup>ND</sup> OBJECTOR**

**JASON WAWERU ..... 3<sup>RD</sup> OBJECTOR**

**RULING**

1. The deceased, whom this succession cause relates, died on 26<sup>th</sup> September, 2022. Based on the information in the documents presented before the Court, there are currently no other proceedings related to his estate that have been lodged.
2. The Petitioner filed a petition for Letters of Administration ad colligenda bona under Section 67 of the [Law of Succession Act](#) in her capacity as the next friend and guardian of EMM. The petition is supported by a supporting affidavit and a supplementary affidavit sworn by the Petitioner.
3. The petition itemizes the prayers that the Petitioners seeks as follows;
  - i. That this honourable court be pleased to grant letters of administration ad colligenda bona to enable me to collect funds necessary for the immediate and owing needs of EMM, including school fees, transport, rent, living expenses and outstanding fee debt totalling Kes.620,200/+;



- ii. That this honourable court be pleased to order that any financial proceeds comprising the estate of the deceased or those that are owing to the estate of the deceased be deposited and preserved in an independent court interest-earning account;
  - iii. That this honourable court be pleased to order the administrators of the deceased's estate to provide for the school fees, transportation, rent and other reasonable maintenance costs of EMM;
  - iv. That this honourable court be pleased to grant such other relief as this honourable court may deem just and fit in the circumstances.
4. The petition is opposed by the Objectors herein, who lodged an objection to the making of the grant petitioned for. The Objectors also filed a replying affidavit sworn by the 1<sup>st</sup> Objector in response to the Petitioner's supplementary affidavit.
  5. The Petitioner, in addition to the above pleadings, filed a notice of Preliminary Objection dated 23<sup>rd</sup> May, 2025, which raised the grounds below;
    - i. That the response by the objector verily and fundamentally offends the provisions of Rule 17 (5) and 17 (6) of the *Probate and Administration Rules, 1980* for being insufficient and incompetent by dint of lacking an answer in Form 25 to the petition for a grant together with a petition by way of cross-application in Form 84, supported by affidavit, for a grant to the estate of the deceased to be made to the objector.
  6. This ruling addresses the Preliminary Objection and also evaluates the validity of the petition as submitted.

### **Analysis and determination**

7. The Petitioner's Preliminary Objection argues that the objection is both insufficient and incompetent because there is no answer to the petition in Form 25, along with a cross-application in Form 84 for a grant of the estate of the deceased to be made to the objectors.
8. The Objectors argue that they lodged the objection in the prescribed form- Form 76 and submitted a supporting affidavit in support thereof.
9. The present petition is for Letters of Administration ad colligenda bona. The Probate and Administration Rules make provision regarding the filing of objections to the making of grants under Rule 17, which states as follows;

“ 17.

- (1) Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7(4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in Form 76 or in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection.”



10. The petition, having been brought under Section 67 of the *Law of Succession Act*, is exempt from publication (gazette), which is a requirement under Rule 7(4), by Rule 36(4). Therefore, a party wishing to object to the grant under Section 67 files the objection without referencing specific timelines, as there is no publication indicating any timelines, provided it has not been overtaken by events or if there are particular timelines set by the court before which the application for the grant has been made.
11. I have reviewed the objection submitted by the Objectors, which is presented in the appropriate Form 76 and titled as an objection to the grant. This document adheres to the required format and encompasses all the necessary content as specified by the probate rules. While the Applicant has noted 'notice of motion' beneath the title, framing the objection as an application, the substance of the document remains consistent with the rules. Therefore, this deviation in putting the words 'notice of motion' is not a fatal error.
12. Now, on the ground that there is no answer or cross petition, which is the main ground in the Preliminary Objection, Rule 17 (5) and (6) provides as below;

“ 17.

- (5) The registrar of the registry in which the objection is lodged shall forthwith upon the lodgement of the objection cause a notice in Form 67 to be sent to the objectors, by registered post or otherwise as he may think fit, requiring him to file in the registry within such period as the registrar may specify in the notice an answer in Form 25 to the petition for a grant together with a petition by way of cross-application in Form 84, supported by affidavit, for a grant to the estate of the deceased to be made to the objectors.
  - (6) If within the period specified in subrule (5) the objectors has filed in the registry in the proper form an answer to the petition for a grant, together with a petition by way of cross- application for a grant to himself, the registrar shall refer the matter to the court for directions, and shall notify the petitioner and the objectors of the time and place set for the hearing of the petition, answer and cross-application”.
13. According to the probate rules, the objectors files the answer and the cross-petition upon being prompted by the court registrar to do so via Form 67, which should also specify the timelines for such filing. In this case, there was no such prompt. However, the objection document (Form 76) and the Affidavit in response to the petition are on record.
  14. For the sake of expediency, the common practice is that certain technicalities on notices are disregarded. Generally, parties proceed by submitting their answers, cross-petitions, or any other required documents without following all the formal prompts. In such cases, the documents are directly presented to the court for directions on how to proceed with the matter or directions are taken towards their filing.
  15. Therefore, where a technicality is raised and the Court did not issue the necessary prompts, it cannot be used against a party that has not filed the subsequent documents required upon the prompt. The best recourse the Court can take is to issue directions to regularize. The central focus of succession law lies



in safeguarding the rights of all parties involved, ensuring that each individual has a fair opportunity to present their case. This is designed to facilitate a just resolution, allowing for the consideration of diverse perspectives and interests.

16. The preliminary objection fails and is dismissed.
17. This Court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. In light of this, as I examined the Preliminary Objection raised by the Petitioner, I considered the nature of the grant the Petitioner is seeking and its intended purpose.
18. A grant colligenda bona is 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.
19. The Petitioner has stated this above as the purpose of the grant; however, upon examining the prayers sought and the grounds, it expressly asks for orders for the collection of funds for the provision of a minor. It also seeks injunctive orders regarding financial proceeds comprising or owing to the estate and an order directed at the administrators of the deceased's estate to make provision for the minor.
20. The provision for dependant(s) is distinctly separate from the collection and preservation of the estate. Provision requires that access to the funds be linked to the specific assets or income of the deceased's estate from which the amounts are expected to be drawn; it is not a blanket order. In collection and preservation, an administrator with a grant ad colligenda bona cannot make provision for dependants unless there is an application made in Court for such provision to be granted by the administrator or an explicit order that permits it at the time of the grant, but which must also specify the amounts and their source.
21. Further, the additional prayers outlined in the petition cannot be granted within the framework of the petition for Letters of Administration ad colligenda bona under Section 67 of the [Law of Succession Act](#), as has been presented.
22. A grant of whatever kind is significant and delicate, so it is essential for a petitioner to clearly define the type of grant and its intended purposes. A petition is the primary document that initiates succession. While errors in formatting can often be overlooked, it is crucial that the type of grant being applied for and the grounds for the application are clearly defined and do not conflict with each other. An error in referencing the type of grant applied for is a serious issue that cannot be overlooked. The type of grant and its purpose are intrinsically linked and cannot be separated; otherwise, it is prone to abuse.
23. A grant ad colligenda bona is a limited grant of administration issued to collect and preserve the assets of a deceased person's estate, particularly when there is urgency and a full grant cannot be obtained in time. It allows for the collection of assets and the taking of necessary steps to protect them, but does not grant the power to distribute the assets or manage the estate generally.
24. The petition is defective in form. It is hereby struck out with no order as to costs.
25. It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 22<sup>ND</sup> DAY OF JULY, 2025.**

.....

**C. KENDAGOR**

**JUDGE**



In the presence of:

Court Assistant: Beryl

Mr. Kavila, Advocate for the Petitioner

No attendance for the Objectors

