



**Mwei v Kamwele & 2 others (Family Miscellaneous Civil Case E007 of 2025) [2025] KEHC 12937 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12937 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
FAMILY MISCELLANEOUS CIVIL CASE E007 OF 2025  
TM MATHEKA, J  
SEPTEMBER 19, 2025**

**BETWEEN**

**DAVID MUTHIANI MWEI ..... APPLICANT**

**AND**

**SARAH KAMWELE ..... 1<sup>ST</sup> RESPONDENT**

**AGNES KAMWELE ..... 2<sup>ND</sup> RESPONDENT**

**PHOEBE KAMWELE ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. According to the applicant, David Muthiani Mwei, he co-owned the land number Kiteta / Ngiluni /727 and Kiteta/ Ngiluni /114 with the deceased Kamwele Mwei in equal shares as tenants in common. Kamwele died on or about June 2021 and his undivided half share in the said parcel of land ought to have devolved to his estate to be administered in accordance with the Law of Succession Act (LOSA). However, his family had failed to take out letters of administration over the estate and had instead proceeded to unlawfully appropriate the entire property to the exclusion of the applicant contrary to the intention and legal effects of tenancy in common.
2. He filed the Summons dated 14 April 2025 seeking the grant of a special limited grant of letters of administration ad litem(sic) in respect of the estate of the late Kamwele Mwei To Sarah , Agnes and Phoebe Kamwele the widows of the deceased for the sole and limited purpose of representing the estate in an environment and land suit to be filed by the applicant concerning a land dispute arising from that tenancy in common. The applicant has annexed the proposed plaint.
3. The third respondent Phoebe filed a replying affidavit as the third wife of the deceased on behalf of herself and the other widows of the deceased. In the Affidavit sworn on 9th June 2025 the third respondent depones that the three windows of the deceased are aged 80 years and above and due to age



related illnesses and frailties would be the worst to defend this intended suit by the applicant. That they have not refused to bring a succession cause for the administration of the estate of their late husband.

4. It is their case that their husband and the applicant had shared out the said properties had set out boundaries and their respective family members occupy the said properties as agreed between them. That they would want to defend the suit and also file a counterclaim .To enable them do this effectively they have exercised their discretion and appointed and authorized their respective children namely and respectively :

Esther Katunge 1<sup>st</sup> House

Paul Mutua Mwai -2<sup>nd</sup> House

Samwel Nguzi Kamwele 3<sup>rd</sup> House

1. These three are to file for the full grant letters of administration for the estate of the deceased and as administrators, to represent their interests ( the respondents) and those of the estate of their husband.
2. The respondents urged the court to dismiss the application and allow their above children to petition for the necessary grant of letters of administration to the estate of their late husband and to defend the intended suit and to file a counterclaim.
3. Parties filed written submissions.
4. In his submissions the applicant raises the following issues
  - i. Whether the estate of the deceased remains unrepresented and incapable of defending its legal interests
  - ii. Whether the respondents' failure to petition for full letters of administration Justifies the issuance of a special limited grant
  - iii. Whether the applicant has demonstrated sufficient cause for the special limited grant to be issued in the interests of justice and equity
  - iv. Whether they grant if issued prejudices any party
5. The applicant relies on section 45, 54, 82(a) & Rule 14 of the Fifth Schedule to the [Law of Succession Act](#), Article 40 [the Constitution](#) of Kenya, Re Estate of Gitau on the circumstances that warrant the issuance of a special limited grant, to protect both the estate and co-owners like the applicant. It is urged for the applicant that unless the orders requested are granted, he will suffer irreparable prejudice. Relying on [Mitu-Bell Welfare Society vs Kenya Airports Authority & 2 Others \[2021\]eKLR](#) he submits that his proprietary rights ought to be protected against arbitrary deprivation.
6. He further argues that it is just equitable and expedient for the court to grant the order sought because the family's failure to obtain a grant has frustrated his rights and the special limited grant ad litem would not confer rights of distribution but only ensure proper representation in the intended ELC proceedings as held in [Re Wahome Njoki](#)
7. IT is submitted further that such a grant would be protective and would not prejudice the beneficiaries but would uphold justice.
8. In seeking an order for a special limited grant of letters of administration ad litem through the respondents to represent the estate of the deceased it is argued that the applicant has demonstrated that the estate of the deceased remains unrepresented over four years since his death the respondents in-action amounts to intermeddling and prejudices both the estate and the applicants proprietary rights ,



that the applicant is unable to prosecute his claim before the ELC without a duly appointed legal representative of the estate and the issuance of a special limited grant is lawful equitable urgent and in the best interests of justice

9. For the respondent it is submitted that section 54 of the LOSA gives court the power to limit a grant of representation which it has the residual to make in any of the form described in the 5<sup>th</sup> schedule
10. It is argued that that rule 11 to 16 of the Fifth Schedule cover grants for special purposes and rule 14 provides for a form of grant for administration limited to suits. That it is about a suit pending in a particular court and the grant is intended to represent the deceased in such pending suit at the court or another suit to be filed at the same court in which the suit presently involving the deceased was pending.
11. it is argued that rule 14 is not relevant or applicable in the circumstances as no suit is pending against the deceased in this court hence the application is incompetent and the respondents cannot be appointed as sought under this rule. Further that under this rule there is no form of grant in the 5<sup>th</sup> schedule special limited grant of letters of administration ad litem.
12. It is submitted that the best thing would be for the applicant to file a substantive petition for letters of administration ad litem under rules 15 and 16 of the schedule under forms PA90 or 90B.
13. That the respondents have demonstrated their incapacities and inability to defend the said suit. That indeed the first respondent passed on on the 12<sup>th</sup> of July 2025 a matter well within the applicant's knowledge as a close relative.
14. I have carefully considered the application before me and the only issue is whether the order sought ought to be granted.
15. It is not in dispute that the Kamwele Mwai passed on and that his estate has not been administered.
16. It is also not disputed that the three widows are of advanced age and that one of them, the 1<sup>st</sup> Respondent even passed away as this matter was ongoing.
17. It also not in dispute that the properties were held in common tenancy between the applicant and the deceased. The applicant's case that the family of the deceased has occupied his portion of his share is disputed by the Widows whose testimony in the joint affidavit is that their husband and the applicant dealt with the issue in his life time, and the applicant's position is not the correct position. Hence the matter is not as simple as the applicant puts it and it would require strength and good health to deal with the issue.

Section 54 of the LOSA states:

#### Limited grants

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.

In the Fifth Schedule the following rule states

#### 14. Administration limited to suit

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.

18. A plain reading of this rule indicates that for this rule to apply there has to be a pending suit, and it will apply to matters related to the pending suit between the same parties.
19. In this case there is no pending suit for the matter to answer to the call of this rule. In deed the applicant intends to file suit in the ELC court. While it is clear that he has a cause of action as against the estate , this rule does not give him the relief he seeks.
20. He seeks that the three widows be joint representatives of the estate, this is in line with s. 66 of the LOSA as they are up there in the priority criteria. However, it has not been denied that the 1<sup>st</sup> respondent is deceased. That would mean that for her to be represented in the suit , the representative would have to have letters of administration for her estate. So, in a way the prayer is overtaken by events, and her demise demonstrates the fact of poor health of the respondents as highlighted in their replying affidavit,
21. Having read the affidavit by the 3<sup>rd</sup> respondent, it is clearly evident that the intended suit would pit the applicant against the entire the family of the deceased as represented by the three houses. The widows have resolved this by delegating their priority position to their children and it is evident that this application indeed has indeed provoked the family to not only appoint representatives of each house but representatives to petition for the full grant of letters of administration for the estate.
22. I am persuaded that it would be in the best interests of the estate for the three representatives to Petition for letters of administration for the estate and once grant is issued, the applicant will be at liberty to sue them on behalf of the estate
23. In the circumstances the summons is declined.
24. The three representatives to file and serve the Petition within 45 days hereof.

Each party to bear its own costs.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 19<sup>TH</sup> SEPT 2025**

**MUMBUA T MATHEKA**

**JUDGE**

Mbithi for respondents

SK Mutanya for applicant's N/A

CA Chrispol

