



**In re Estate of the Late Antonio Angelo Costabir (Deceased) (Succession Cause E166 of 2024) [2024] KEHC 15472 (KLR) (Family) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 15472 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E166 OF 2024**

**EKO OGOLA, J**

**MAY 9, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE  
ANTONIO ANGELO COSTABIR (DECEASED)**

**IN THE MATTER OF  
HEATHCLIFF IGNATIUS COSTABIR ..... APPLICANT**

**RULING**

1. The Petition for Letters of Administration *ad litem* before this court is dated 26<sup>th</sup> February 2024. The deceased died on 2<sup>nd</sup> July 2023 in Nairobi. According to the birth certificate on record, the applicant was the deceased's son and a beneficiary to the deceased's estate.
2. Before the death of the deceased, he had instituted a suit, Civil Suit No. 220 of 1992, *Angelo Costabir & Another v Hussein Ali Odey & 7 others*. The deceased prayed for the specific performance of a sale agreement of LR No. 330/357 Nairobi. The applicant deposed in his supporting affidavit that as a beneficiary to the deceased estate, he has to protect the assets of the estate. This could only be achieved if he was granted Letters of Administration *ad litem*.

**Determination**

3. I have considered the Petition as filed. Rule 73 *Probate and Administration Rules* gives the 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. In the case of *In re the estate of Helena Wangechi Njoroge (Deceased)* (2015) eKLR the Court held the following concerning letters of administration '*ad litem*':

“...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.”

4. From the foregone, it is clear that a Limited Grant of Letters of Administration *ad litem* is usually used when the estate of a deceased person is required to be represented in court proceedings. In this case, there is a cause of action for which the deceased has standing and having passed on, his personal representative may step in to pursue that claim on behalf of the deceased estate. This role is limited. If granted the letters of administration ad litem, the administrator has no power to distribute the estate if successful in his claim on behalf of the deceased.
5. From the foregoing, I allow the Petition as prayed. Grant of Letters of Administration *ad litem* be issued to Heathcliff Ignatius Costabir, limited only to prosecute Civil Suit No. 220 of 1992, [Angelo Costabir & Another v Hussein Ali Odey & 7 others.](#)

Orders accordingly

**DATED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY 2024.**

.....

**E.K. OGOLA**

**JUDGE**

In the presence of:

Mr. Mingo for the Applicant

Ms Gisiele M court Assistant

**E. OGOLA J.**

