



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
FAMILY DIVISION
PROBATE & ADMINISTRATION CAUSE NO. E-611 OF 2021
IN THE MATTER OF THE ESTATE OF JENNIFER KUSURO MUSIWA (DECEASED)

RULING

Kissim Arap Lelbel, Boror William Chepkorot, Patricia Atulell Musani Musiwa and Rashid Hassan Chemonges have petitioned this court, through Petition dated 30th March 2021, for letters of administration *ad litem* in respect of the estate of Jennifer Kusoro Musiwa, deceased, who died domiciled in Nairobi Kenya on the 17th April 2019 limited for purposes of filing suit as personal representatives and without powers of distribution of the estate. They state that they intend to file a civil suit for the purpose of ensuring that the estate of the deceased is preserved and/or it is not wasted with no powers to distribute the estate. They state that they present this petition in their capacity as beneficiaries of the deceased.

In their joint Affidavit in support of the Petition sworn on the 30th March 2021 they reiterate that they are seeking the grant to enable them file suit on behalf of the estate of the deceased for preservation of the assets and properties of the deceased. They identify themselves as nephews, nieces and brothers of the deceased and that unless they are issued with the grant as prayed they will not be able to file the intended suit. They have attached death certificate of the deceased and a letter of the Chief Ngando Location, Kawangware Division, Nairobi dated 17th March 2021.

On 18th May 2021 Mr. Macharia attended court and informed the court that he was holding brief for Mr. Danstan Omari for the petitioners. One of the petitioners is Patricia Atulell Musani Musiwa who is represented by Mr. Mosioma.

Mr. Macharia made brief submissions reiterating what the petitioners have stated that they are seeking limited grant as beneficiaries of the estate of the deceased herein for purposes of filing suit to preserve the estate with no powers to distribute the estate. Mr. Mosioma had no objection to the petition.

I have considered this petition. The Succession Act allows granting of limited grants for various purposes. These are provided for under Section 54 of the Act which provides that:

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.

The Fifth Schedule of the Act gives details of various limited grants and the correct format to use in petitioning the court. Limited Grants *Ad Litem* fall under paragraph 14 of the Fifth Schedule of the Law of Succession Act. The paragraph is specific that the grant of administration *ad litem* is limited to filing of suit. It states that:

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.

This Petition for Limited Grand *Ad Litem* is initiated through Form 90B. This form is clear on the purpose for which the grant is limited - filing suit. It is envisaged that there is a cause of action for which the deceased has standing and having passed on, his/her personal representatives steps in to pursue that claim on behalf of the estate of the deceased. By extension, to defend an existing or suit against a deceased person. Once granted, the administrator has no power to distribute the estate if successful in his/her claim on behalf of the deceased.

The petitioners have not disclosed what suit they intend to prosecute or defend. Their intention becomes clear in their statement that "... we intend to file a civil suit in this honourable court for the purpose of ensuring that the estate of the deceased is preserved and/or it is not wasted". Paragraph 4 of the supporting affidavit reiterates the same intention. Without being specific of the suit they intend to file or defend on behalf of the estate, it is my view that the petitioners intended to seek limited grant for purposes of preserving the estate of the deceased and not to defend or prosecute an existing suit.

Section 67 of the Law of Succession Act provides for a limited grant for purposes of collection and preservation of assets of the estate of a deceased person. Rule 36 of the Probate & Administration Rules provides that:

1. Where, owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration *ad colligenda bona defuncti* of the estate of the deceased.

2. Every such grant shall be in Form 47 and be 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.

It is clear to me that even assuming that this is what the petitioners intended, for a grant of administration *ad colligenda bona* under Section 67, a petitioner must demonstrate the urgency informing the decision to move the court for this grant. The petitioners before me have not demonstrated the urgency to seek limited grant to enable them collect, get in, and receive the estate and do such other acts that may be necessary to preserve the estate. It is trite that a party is bound by his/her pleadings and therefore this court will make a determination basing on the pleadings presented before it. The petitioners have failed to demonstrate why they are seeking limited grant *ad litem* in the estate of the deceased herein. They have not demonstrated why they cannot pursue a full grant and prove their entitlement to the estate of the deceased. For this reason, this petition must fail. The petition dated 30th March 2021 is hereby dismissed. The petitioners are at liberty to follow procedure and apply for a full grant. Each party to bear his/her own costs. Orders to issue accordingly.

DATED, SIGNED AND DELIVERED THIS 16TH JUNE 2021

S. N. MUTUKU

JUDGE