



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Leonard Kipkirui Sawe (Deceased) (Succession Cause  
E040 of 2025) [2025] KEHC 13429 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13429 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE E040 OF 2025  
JK NG'ARNG'AR, J  
SEPTEMBER 30, 2025  
IN THE MATTER OF THE ESTATE OF LEONARD KIPKIRUI SAWE (DECEASED)**

**RULING**

1. What is before this court for its determination are the Applicants'/Petitioners' two Applications dated 5<sup>th</sup> January 2025 and 24<sup>th</sup> March 2025.

**Application dated 5<sup>th</sup> January 2025**

2. The Applicants, Ronald Kiprono Kirui, Timothy Kibet Kirui and Benjamin Kipngeno Kirui have petitioned this court for Letters of Administration Ad Colligenda Bona. They have petitioned this court in their capacity as sons of Leonard Kipkirui Sawe (deceased).
3. The Applicants stated at the time of his demise, the deceased held bank accounts as KCB Sotik Branch, KCB Nakuru Branch and KCB Lavington Branch. That the deceased ran a farming business in Cheptalal, Bomet County where proceeds of tea farming were deposited in KCB Sotik Branch Account and it was from this account that monthly wages for his workers emanated from.
4. It was the Applicants' case that the KCB Nakuru Branch account contained proceeds from the deceased's farming business in Nakuru and his KCB Lavington Branch account contained rental income. That the deceased owned properties in Nairobi that needed maintenance including payment of land rates and rent to the County and National Governments.
5. The Applicants stated that their mother required upkeep and medical attention and the same could only be provided through the deceased's bank accounts. The Applicants further stated that they needed access to the deceased's accounts so as to pay the salaries of the deceased's employees and for the day to day running of the farms.



6. Section 54 of the *Law of Succession Act* provides: -

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.

7. Section 67(1) of the *Law of Succession Act* provides: -

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.

8. Rule 36 (1) of the *Probate and Administration Rules* states that: -

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 defunct of the estate of the deceased.

9. I agree with Maureen Odero J. in *re Estate of Joseph Seilenyi Ole Nkaitoi (Deceased)* [2023] KEHC 27432 (KLR), where she held: -

“As a general rule where no grant has been issued by the court any person is entitled to apply for a grant may approach the court to obtain a Grant Ad Colligenda Bona for purposes of collecting calling in and preserving the estate of Deceased pending the issuance of a Grant.

In *Tristram and Coote’s Probate Practice*, 24 ed At page 394 it is stated: -

“When the estate of a deceased person may be endangered by delay in administering it, the court is not bound to wait for an application by the person entitled to a grant under the rules, but may grant letters of administration ad colligenda bona for the purpose of preserving the property.”

Section 67 of the *Law of Succession Act* cap 160, Law of Kenya provides for the administration of the estate limited for purposes only of collecting and preserving the assets. Under Rule 36 (1) of the Probate and Administration Rules such letters may only issue “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 the representation to the person who by law be entitled thereto in sufficient time to meet the necessities of the case...”

It is important to note that a Grant Ad Colligenda Bona does not confer upon the Grantee the status of a “personal representative” of the deceased person and such Grantee is not entitled to administer the estate of the Deceased. A Grant Ad Colligenda Bona is only made in order to preserve the estate of a Deceased pending issuance of a full grant.”

10. I have looked and carefully considered the Application. It is my finding that the Applicants did not provide sufficient evidence to convince this court to grant them access to the deceased’s bank accounts. In other words, in as much as I sympathise with the Applicants’ plight, they failed to specify the amounts they needed to access in the deceased’s bank accounts. Additionally, they failed to annex any report indicating that their mother was unwell and required medical attention.



11. The deceased's estate as presented by the Applicants was not in danger of being wasted. As indicated above, the purpose of a Grant Ad Colligenda Bona was to collect and preserve the estate of Deceased pending the issuance of a Grant. Faced with a similar situation, Muchelule J. (as he was then) in *re Estate of Joseph Karimi Karubi* (Deceased) [2015] KEHC 8036 (KLR) held: -

“.....I am hesitant to allow access to withdraw funds in the various bank accounts in the name of the deceased as the applicants herein did not indicate how much money was needed for college fees, upkeep of the beneficiaries as well as how much was needed to manage the said estate. It is also true that the court has not been told how much the estate of the deceased is worth, and allowing access to the accounts without assessing the specific sums of money needed therein could result in depletion of funds constituting the estate of the deceased prior to issuance of full grant and confirmation of the same.....”

12. Flowing from the above, it is my finding that the prayer for access to the deceased's three bank accounts cannot issue.

#### **Application dated 24<sup>th</sup> March 2025.**

13. The Applicants petitioned this court for Grant of Limited Letters of Administration Pendente Lite. They stated that at the time of his demise, the deceased was in litigation in Kericho Land Case Misc/ E024/2024 *Johnstone Kimutai Mibei v Jane Chepkemoi Yosei And Leonard Kipkirui Arap Sawe*. The Applicants further stated that they wanted to represent the estate of the deceased in the above suit.

14. Grant of a Limited Grant Pendente Lite is provided under Rule 10 of the 5<sup>th</sup> Schedule of the *Law of Succession Act* which states: -

Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an administrator of the estate of the deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing the estate, and the administrator shall be subject to the immediate control of the court and shall act under its direction.

15. H. Namisi J. in *re Estate of George Gikubu Mbutia (Deceased)* [2025] KEHC 5351 (KLR) held: -

“Simply put, an administrator is appointed simply to administer the estate of the Deceased during litigation where the will of the Deceased is being contested. Pending the determination of that dispute, the court may appoint an administrator pendente lite to continue to administer the estate so as it is not wasted. The administrator is not permitted to distribute the estate but merely manage the same pending litigation.”

16. From the above, it is clear that the Grant of Letters of Administration Pendente Lite was limited to a contested Will and the said Will was the subject of litigation. In the present case, there was no evidence that the deceased left behind a Will. I have perused the Applicants' Advocate's Letter dated 17<sup>th</sup> March 2025 annexed as “AK 3”. The Advocates requested the Applicants for a substitution of the deceased so that the case could proceed. In my view, this was a continuing case which had commenced during the lifetime of the deceased and could not be about his Will.



17. I will not say more on this but I will quote Mrima J. in *Julian Adoyo Ongunga & another v Francis Kiberenge Bondeva (Suing as the Administrator of the Estate of Fanuel Evans Amudavi, Deceased)* [2016] KEHC 4186 (KLR), where he held: -

“The law further provides for various forms of limited or special grants. They include, but not limited to, Limited Grant of Letters of Administration Ad Litem. Limited Grant of Letters of Administration Ad Colligenda bona, Limited Grant of Letters of Administration Ad de bonis non, Limited Grant of Letters of Administration durante minore a estate, Limited Grant of Letters of Administration durante absentia, Limited Grant of Letters of Administration pendente lite, Limited Grant of Letters of Administration purpose and due to their limited nature each such grant ought to be used for that specific purpose only. Given that more than one limited grant or a combination of grants can be issued depending on the circumstances of a case, there is every reason to deal with a limited grant as it specifically provides. That will undoubtedly bring order and decorum in dealing with an estate of a deceased person noting that there may be need to obtain a full grant in future.

In this discussion, I will deal with two forms which are material to the matter before me. One form is the one commonly known as Limited Grant of Letters of Administration Ad Litem which is provided for under Form 14 of the Fifth Schedule of the Act and deals with suits. The said provision states as follows: -

‘when it is necessary that the representation 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’.

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.....”

18. Flowing from the above, it is my finding that the prayer for the Limited Grant Pedente Lite cannot issue for the reasons stated above.
19. In the end, the Applications dated 5<sup>th</sup> January 2025 and 24<sup>th</sup> March 2025 have no merit and are dismissed.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**HON. JULIUS K. NG'ARNG'AR**

**JUDGE**

Ruling delivered in the presence of:

Siele/Susan (Court Assistants)

Chelule for the Petitioner

N/A for the Objector

