



**Nyamai v Nyamai & 2 others (Succession Cause E006 of 2024)  
[2025] KEHC 13675 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13675 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE E006 OF 2024**

**RC RUTTO, J**

**SEPTEMBER 30, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE  
CHRISTINE KAVENI NYAMAI (DECEASED)**

**BETWEEN**

**JULIUS WALI NYAMAI ..... PETITIONER**

**AND**

**DANIEL MASUNGU NYAMAI ..... 1<sup>ST</sup> RESPONDENT**

**PHYLES KATUMBI NYAMAI ..... 2<sup>ND</sup> RESPONDENT**

**FAITH NGINA NYAMAI ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By Notice of Motion dated 16<sup>th</sup> February 2024, the petitioner has filed this application by invoking Articles 50 & 159 of the Constitution, sections 1A, 1B and 3A of the Civil Procedure Act and order 51, rule 1 of the Civil Procedure Rules seeking the following reliefs:
  1. ... Spent;
  2. That this Honourable Court be pleased to order that the 1<sup>st</sup> – 3<sup>rd</sup> respondents do appear before this Honourable Court to give sufficient reasons why the Grant *ad litem* should not be issued to the petitioner/applicant;
  3. That this Honourable Court be pleased to make appropriate orders to ensure the convenient administration of justice;
  4. That the costs of this application be provided for.
2. The application is supported by the grounds stated on its face and by the supporting affidavit of the petitioner. The essence of the application is that the petitioner intends to prosecute HC Succession



Cause No 374 of 2013, concerning the estate of Nyamai Kilili (deceased), in which the deceased herein, Christine Kaveni Nyamai, was named as the 2nd petitioner. The matter was scheduled for mention on 21st February 2024 to confirm whether the petitioner had filed an application for substitution following the death of Christine Kaveni Nyamai.

3. The petitioner alleges that the respondents have refused to sign and/or consent to the issuance of the grant *ad litem* and have declined to appear before the chief to explain their refusal. He urges that their conduct has delayed the proceedings in HC SC No 374 of 2013; In the matter of the estate of Nyamai Kilili (deceased) thereby causing injustice to the estate of the deceased herein. He urged this court to intervene and grant the orders sought.
4. Despite being duly served, the respondents did not file any response or attend the hearing. The court was satisfied that service was properly effected, and the matter proceeded in their absence.
5. Upon reviewing the application, oral submissions, and applicable law, the court finds that the petitioner essentially seeks to compel the respondents to justify their refusal to consent to the issuance of a Grant *ad litem*. However, such an application is not recognized under the law.
6. A Grant *ad litem* is a special limited grant issued solely for the purpose of representing a deceased person in legal proceedings, as provided under Section 54 of the [Law of Succession Act](#) and Rule 73 of the [Probate and Administration Rules](#). It does not require consent from other family members, and refusal to consent cannot be a basis for compelling appearance in court.
7. [In Re Estate of the Toto Ngonyo Hinzano \(ad litem 31 of 2021\) \(2024\) KEHC 5639 \(KLR\)](#) the Court emphasized that a Grant *ad litem* is issued for litigation purposes and does not confer full administrative powers. The court dismissed a similar petition where procedural steps had not been properly followed.
8. Moreover, the petition for issuance of the Grant *ad litem* has not been set down for hearing. Granting the current application would therefore be premature and legally baseless.
9. The Notice of Motion dated 16th February 2024 is found to be unmeritorious and legally untenable. Accordingly, it is dismissed. Each party shall bear their own costs.
10. The applicant to proceed and prosecute the substantive petition seeking the Grant *ad litem* by serving the respondents with the petition and hearing notice in accordance with the law.

It is so ordered.

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

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....Petitioner

.....Respondents

Selina Court Assistant

