



In re Estate of Hannah Wanjiru Kamau (Deceased) (Miscellaneous Application Probate & Administration E207 of 2022) [2025] KEMC 22 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEMC 22 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
MISCELLANEOUS APPLICATION PROBATE & ADMINISTRATION E207 OF 2022
PA NDEGE, SPM
FEBRUARY 27, 2025
IN THE MATTER OF THE ESTATE OF THE LATE
HANNAH WANJIRU KAMAU (DECEASED)**

BETWEEN

**SAMUEL MACHARIA KAMAU 1ST APPLICANT
GEOFFREY NJENGA KAMAU 2ND APPLICANT
DANIEL KAMAU KIKEBE 3RD APPLICANT**

AND

PETER NJUGUNA KAMAU RESPONDENT

RULING

1. A Limited Grant of Administration Ad Litem was issued herein 23/06/2022 by Hon. E. Oboge in the following terms; ‘Limited for the purpose of filing a suit/ defending a suit or representing a suit.’
2. On 3rd July 2024, Samuel Macharia Kamau, Daniel Kamau Kikebe and Geoffrey Njenga Kamau (the Applicants) filed Chamber Summons under Sections 47 and 76 of the *Law of Succession Act*, seeking the following substantive orders:
 - i. That the honorable court be pleased to revoke the Limited grant ad litem issued under section 54 and the 5th rule of the Law of Succession Act
 - ii. That any suits filed on the strength of the said limited grant ad litem issued on 23/06/2022 be struck out
 - iii. That costs be provided.
3. In the Supporting Affidavit sworn on 19th June, 2024, the Applicants deposed that the Limited grant issued on 23/06/2022 was issued to the respondent without the respondent contacting or seeking the



consent of the other beneficiaries. That as such, they did not give consent to the Respondent, their brother, to file suit for the estate neither did he involve them. That any suit filed with the benefit of the Limited grant dated 23/06/2022 therefore ought to be struck out or withdrawn because the respondent has used the impugned limited grant to file suits against persons who have been sold land to by the Applicants herein. That the impugned Limited grant is therefore being abused and misused by the respondent to cause havoc in the applicants' lives yet the land had been subdivided during their mother's lifetime and all that is remaining is for a succession cause to be filed in court for transfers to be effected. That the Respondent is playing a cat and mouse game with the court and misusing the court to cause distress and embarrassment to his sibling. That the respondent has refused to co-operate with them to file a succession cause in order to effect the sub-division of their mother's estate carried out.

4. The Application is opposed by the Respondent, Peter Njuguna Kamau, who swore a Replying Affidavit on 09/09/2024. He deposed that the applicants herein are his brothers. That subsequent to their mother's demise, the applicants forcibly entered her land, demarcated it among themselves and placed persons on the land in total disregard of the fact that the deceased had left a written will and that succession had not been undertaken. That the applicant's dealing in the deceased's property amounts to intermeddling with the estate of the deceased and that the same is prejudicial to the other beneficiaries of the estate. That he petitioned for the letters of administration ad litem for the purposes of filing or defending suit in the year 2022 and that he swore an affidavit in support of the petition and annexed thereto a Certificate of Death in respect of the deceased, a letter from the chief and the deceased's will. That he disclosed in the Petition that the grant of representative was for the sole purpose of filing and defending suit. That the Chief's letter identifies all the beneficiaries of the estate of their deceased's mother. That the deceased's will identifies the manner in which she distributed her properties. That he was not made aware of any requirements to obtain the consent of the Applicants or any other person prior to petitioning for a grant of letters of administration ad litem. That he believes that he made full disclosure of all matters required of him in the petition for letters of administration ad litem and the court being satisfied with the information and documents he had furnished, issued him with a grant on 23/06/2022. That he has since instituted Nakuru MCELC No. E102 of 2024 against one Joseph Ngigi and Margaret Muthoni Bulbul who are in occupation of their deceased mother's land. That the said Joseph Ngigi and Margaret Muthoni Bulbul have filed their respective defenses and enlisted the applicants as their witnesses in that suit. That the applicants herein have recorded and filed their witness statements in the said suit and admitted having sold land to the two defendants in Nakuru MCELC No. E102 of 2024 and the issue of whether the sales by the applicants are valid or not is an issue for determination by the court seized of Nakuru MCELC No. E102 of 2024 and not this court sitting as a family court in these proceedings. That the instant application has therefore been brought in bad faith to circumvent the proceedings in Nakuru MCELC No. E102 of 2024. That this court therefore has no jurisdiction to strike out any suit commenced using the grant issued herein. That the instant application is thus based on irrelevant and superfluous matters, is a nonstarter and an abuse of the court process and be dismissed with costs.
5. On 3rd October, 2024, parties through their respective counsel took directions to canvass the Application by way of written submissions.

Applicant's Submissions

6. The Applicants filed their submissions on 20th January, 2025. Their advocate argued that under section 14 of the fifth schedule under which the respondent applied for the Limited grant ad litem, Limited grant is made to a person if there is a pending suit and the executor or person entitled to administration is unable or unwilling to act. That in this case, there was no suit pending involving the deceased to warrant a Limited grant being issued to enable the respondent in this case proceed with it. That



secondly, the Applicants did not nominate the respondent in this case to represent the deceased in any suit neither was there any pending suit involving the deceased. That the respondent concealed to the beneficiaries and to the court his desire to obtain a Limited grant. Learned counsel relied on the case of *Albert Kitbinji Njagi v Jemima Wawira Njagi & Anor; Simon Nyaga Njeru & Anor. (third Respondent/ Interested Parties)* [2020] eKLR where the court found that a grant obtained on the strength of false claims, without obtaining consent of persons who had prior right to the grant and on the basis of facts concealed from the court is liable for revocation, and urged this court to revoke the grant herein in order to accommodate the interest of all beneficiaries in equal platform. Learned counsel further prayed in their submissions that the court do issue time limit to the beneficiaries within which to file for a full grant.

Respondents' Submissions

7. The Respondent filed their submissions dated 31/12/2024 and impressively summarized or framed the issues for determination herein as follows: -
 - i. Whether the grant of letters of administration ad litem made to the respondent on 23rd June 2022 should be revoked.
 - ii. Whether any suits filed on the strength of the grant of letters of administration ad litem to the respondent on 23rd June 2022 should be struck out.
8. The respondent basically relied on the averments in his Replying Affidavit and cited the cases of *Winrose Emmah Ndinda Kiamba v Agnes Nthambi Kasyoka* [2021] eKLR among others to reiterate that consent is not a mandatory requirement in a petition for a limited grant. He further argued that consent is only applicable to parties applying for a full grant or letters of administration but not to parties applying for a limited special grant as is the case herein. On the second issue, it was submitted that this court cannot pronounce itself on suits not before it. He prayed for dismissal of the summons herein with costs.

Determination

9. Upon careful consideration of the application, the rival affidavits and submissions, I find the general issue for determination is whether the summons have merit. The grant intended to be revoked is a Limited Grant of Letters of Administration ad litem which was limited for the purpose of filing suit until further representation was granted by this court. I am aware that a limited grant could also be revoked if any or more of factors in section 76 of the *Law of Succession Act* CAP 160 of the Laws of Kenya are present. I should think also that, it is potent ground in an application for reinstatement of Limited Grant to show that the grant has been used for a purpose other than the one for which it was granted, or that the purposes for which the limited grant was issued has not ceased to exist or has not been spent, and/or the time for which the limited grant was to subsist has lapsed. But, from the arguments presented in this case, I should determine whether: -
 - a) The grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case; or
 - b) The grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.
10. From the provisions of sections 54 of the *Law of Succession Act* a Court may issue a limited grant due to the exigencies arising in relation to the estate and which could not wait for issuance of full grant through the normal way. It is also issued without prejudice to the right of any other person to apply



for full grant of representation to the deceased. As such, limited grant may not be subjected to full and strict compliance with the requirements meant for, as if it is full grant of representation. Again, the person to whom the grant is so made undertakes to administer the estate according to the law but limited for the purpose for which the grant is issued until a further grant of representation is made by the court. I have gone through the averments by the respondent and I am satisfied that the urgency warranted issuance of a limited grant which was issued on 23rd June 2022.

11. On whether a Consent of the other beneficiaries such as the Applicants herein is mandatory, I do agree with the learned counsel for the respondent that the superior courts have severally agreed with Justice Kemei's decision on the matter in *Winrose Emmah Ndinda Kiamba v Agnes Nthambi Kasyoka* [2021] eKLR, where it was held; -

14. On the aspect of consent of the other beneficiaries, the Law of Succession Act that explicitly 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 aforementioned, clearly depicts that the aspect of consent with regard to special limited grants of representation need not be mandatory and judging from the strained relationship between the Appellant/Applicant and the Respondent, the aspect of consent could not be attained as the same was for purposes of acquiring the locus standi for instituting a suit against the Respondent. Therefore, this Honorable Court notes that the action of the Lower Court in granting the Appellant/Applicant the Grant ad litem was at the discretion of that court and considering the circumstances of this particular case, I find that the grant was NOT obtained fraudulently. As such, I am NOT satisfied that the Respondent did not show any sufficient cause as to compel the lower court to revoke the limited Grant issued. The grant is still necessary for purposes of proceeding with the intended Appeal dated 6th October, 2020 filed in court.

12. It is clear from the averments herein that the Respondent's Limited Grant ad litem was strictly for purpose of instituting a suit against the intermeddlers in order to preserve the Estate of the deceased from the intermeddling which has been confirmed to have been done and pending before a lands court. This family court cannot therefore interfere or pronounce itself on the legality or otherwise of a suit not before it as urged by the applicant.

13. 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.

14. 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, whether pending or soon to be instituted. The grant issued to the Respondent on 23rd June 2022 was also limited



for purposes of filing suit. The suit has already been filed and this Court cannot interfere with the suit by pronouncing itself as its legality or otherwise. I shall also issue no further orders with respect to the estate of the deceased herein as invited by the learned counsel for the Applicants in her written submissions. In the result, it is my finding that the Appellants' application dated 19.06.2024 lacks merit. The same is dismissed with no orders as to costs.

It is so ordered.

DATED AND DELIVERED AT NAKURU THIS...27TH DAY OF FEBRUARY,2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Applicant's Counsel: Maina h/b N. Njoroge

Respondent's Counsel: Ratemo

1st Applicant: n/a

2nd Applicant: n/a

3rd Applicant: n/a

Respondent: n/a

