



REPUBLIC OF KENYA



In re Estate of Denge Halake Ginda (Deceased) (Succession Cause E010 of 2025) [2025] KEMC 191 (KLR) (15 July 2025) (Ruling)

Neutral citation: [2025] KEMC 191 (KLR)

**REPUBLIC OF KENYA
IN THE MOYALE LAW COURTS
SUCCESSION CAUSE E010 OF 2025
A GALGALO, PK
JULY 15, 2025
IN THE MATTER OF THE ESTATE OF DENGE HALAKE GINDA (DECEASED)

IN THE MATTER OF
SALAT DENGE HALAKE PETITIONER**

RULING

1. This ruling pertains to an application for a special limited grant of letters of administration by the Petitioner, Salat Denge Halake, concerning the estate of his late father, Denge Halake Ginda, who died intestate on 11th January 2012 at Manyatta Burji, Moyale Sub-County.
2. The petitioner seeks a limited grant solely for the purpose of filing and pursuing a civil suit to protect a parcel of unregistered land allegedly part of the deceased's estate, currently under threat of illegal occupation by third parties.
3. The petition was filed under certificate of urgency on 5th July 2025. On 8th July 2025, the Petitioner was sworn before this Court and gave testimony detailing the need for the special grant. The matter was adjourned for the hearing of witnesses on 10th July 2025.
4. On 10th July 2025, the following witnesses were heard:
 - AW1: Hawo Denge Halake (widow of the deceased)
 - AW2: Hussein Denge Halake (elder son)
 - AW3: Hadija Denge Halake (daughter)
5. The Petitioner and three key family members testified as follows:
 - Hawo Denge Halake (AW1) testified that her late husband owned a farm and residential plot at Manyatta. She confirmed that the petitioner is her son and that she, being aged and unwell, consents to his pursuit of justice on behalf of the family.



Hussein Denge Halake (AW2) affirmed that he is the elder son and currently detained at Ruiru Prison. He supports his younger brother's application to act for the estate.

Hadija Denge Halake (AW3) also confirmed that the Petitioner has the support and consent of the family to act as administrator for purposes of protecting the land.

All witnesses confirmed and supported the petitioner's application and declared that he was acting on behalf of the family in protecting the estate of the deceased. These testimonies were consistent and unchallenged.

6. The Court identifies the following issues:
 - a. Whether the Petitioner has established sufficient grounds to warrant issuance of a special limited grant under Kenyan law;
 - b. Whether the claim is consistent with the principles of Islamic succession law (faraid);
 - c. Whether the Petitioner is legally and religiously competent to represent the estate for the limited purpose sought.
7. Under Section 54 of the *Law of Succession Act* (Cap 160), a limited grant of representation may be issued for specific purposes when circumstances are so required, especially where immediate action is needed to protect or preserve the estate. Section 54 of LSA states; "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."
8. In the Fifth Schedule of LSA at Paragraph 14, it provides that the grant of administration ad litem is limited to filling a suit. The details are 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.
9. The Petitioner has averred that the land in question is unregistered and was left by the deceased. He has shown that the property is under imminent threat of illegal occupation, thereby justifying urgent legal protection through a civil suit. The Petitioner's request is therefore squarely within the scope of a special limited grant under the law.
10. In *Re Estate of Jennifer Kusuro Musiwa (Deceased)* eKLR the court held as follows; "... 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 order 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..."
11. 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.”
12. This case aligns with that principle that the said land is under threat from other people illegally occupying it and the petitioner’s intention to seek this grant is for the purpose of protecting the said land by filing a suit in the court of law.
 13. Although, in the case of *Karega & two others v Kiama & two others* in the Succession Cause 6 of 2019 [2022] KEHC 9880 (KLR) (8 July 2022) the court held that consent with regard to special limited grant of representation need not be mandatory. The court viewed that such a grant was normally issued due to the exigencies arising in relation to the estate and which could not wait for issuance of full grant through the normal way; that it was also without prejudice to the right of any other person to apply for a full grant of representation. In this instant case, all other beneficiaries (the widow and siblings) have filed written consents and testified in open court supporting the appointment of the Petitioner for this specific purpose.
 14. Under Islamic succession law (*‘ilm al-farā’id*), administration of an estate must observe justice, protection of rights, and the preservation of family property. The Quran commands: "Indeed, Allah commands you to render trusts to whom they are due..." (Qur'an 4:58). The intention of the petitioner is to protect the estate of their deceased father, aligns with one of the objectives of the Islamic Shariah law, *Maqasid al-shariah* of protecting property. Preservation of property means protecting the property from destruction and from transferring the property to others in a wrong way including prohibition against injustice, tyranny and so on (Mastura Razali et al, 2021).
 15. In the Quran Allah Says, “And let those [executors and guardians] fear [injustice] as if they [themselves] had left weak offspring behind and feared for them. So, let them fear Allah and speak words of appropriate justice. Indeed, those who devour the property of orphans unjustly are only consuming into their bellies fire. And they will be burned in a Blaze.” (Surah An Nisa, 4:9-10)
 16. The scholars unanimously agree that the estate must be administered by a trustworthy and capable individual. According to Imam Al-Kasani (Hanafi school) in *Bada’i al-Sana’i*, and Imam Nawawi (Shafi’i school), the person best placed to administer an estate is: "The one who is honest, just, and agreed upon by the heirs."
 17. In *re Estate of Peter Mukuha Kago - (Deceased)* [2016] eKLR, the High Court held that, “It has to be put into account that being an executor is a position of great trust. An Executor has a legal as well as a moral obligation to fulfill the role with high standards of care and honesty. The Petitioner, a successful businessman with very cordial relationships with all members of the family except the objector, fits the bill. The court further held that, “... is satisfied that the petitioner is satisfied that the petitioner is fit person to be the executor of the will of the deceased herein”.
 18. Here in this suit, the Petitioner has received full consent from his co-heirs, fulfilling this condition.
 19. Moreover, Ibn Qudamah in *Al-Mughni* (Hanbali school) states:

“ The judge may appoint an administrator to represent the estate even for a particular matter, especially when it is beneficial to all heirs.” This is analogous to a special limited grant, especially when part of the estate is at risk.
 20. Having considered the Petition, evidence presented, legal framework under Kenyan law, and principles of Islamic succession, the Court is satisfied that the Petitioner has demonstrated urgent need for



issuance of a special limited grant; He has the consent of all known heirs of the deceased; He is competent under both Kenyan and Islamic law to pursue this action for the stated limited purpose.

21. Final orders:-

1. A Special Limited Grant of Letters of Administration is hereby issued to Salat Denge Halake for the sole purpose of filing, pursuing, and defending civil proceedings in relation to the estate of the deceased, Denge Halake Ginda, specifically concerning the disputed land and unregistered parcel located at Manyatta, Moyale.
2. The said limited grant does not confer authority to distribute the estate or deal with any other properties except as necessary to protect and preserve the land in dispute.
3. The Petitioner shall return to this Court for full probate or distribution upon conclusion of the civil matter or as otherwise required by the law.
4. No costs.

DATED AND DELIVERED AT MOYALE THIS 15TH DAY OF JULY 2025

PRINCIPAL KADHI

HON. A. GALGALO – PK

In the open court and in the presence of :

Mr. Salat Denge Halake – the Applicant

Mr. Jattani Waqo – the Court assistant

