



In re Estate of Eripon Joseph Lotunyeny (Decesaed) (Succession Cause E006 of 2024) [2025] KEMC 223 (KLR) (18 August 2025) (Ruling)

Neutral citation: [2025] KEMC 223 (KLR)

**REPUBLIC OF KENYA
IN THE MARALAL LAW COURTS
SUCCESSION CAUSE E006 OF 2024
AT SITATI, SPM
AUGUST 18, 2025**

**IN THE MATTER OF THE ESTATE OF ERIPON JOSEPH LOTUNYENY
(DECEASED)**

BETWEEN

ANTHONY EPOKON ERIPON ADMINISTRATOR

AND

IRERI REIPON RESPONDENT

RULING

1. Shortly after being granted Letters of Administration intestate for the deceased’s estate herein on 17th October, 2024 the Petitioner/Administrator Anthony Epokon Eripon through his counsel on record Mr. Kihoro Kimani applied vide summons directed to the respondent herein to surrender to the court property and funds received by the said respondent as payment to the estate of the deceased herein.
2. In support of the application, the Administrator produced the following evidence:SWIFT money transfer dated 5th November, 2019 for the sum of Kshs 740,000 from Stephen Thuku to the Respondent.Acknowledgment and discharge dated 4th November,2018.Payment voucher from J.M. Mwangi Advocate dated 4th November,2019 for the sum of Kshs 740,000/- to the Respondent herein Ileri Reipon.Limited Grant issued to Ileri Reiponby the High Court in Meru on 4th May, 2010.Letter by Acting Chief Kinap Location in Baragoi location dated 6th August, 2008.Amended plaint in *Civil Suit Number 99 of 2010* at Nanyuki Magistrates Court.Witness statement of Ileri Reiponin *civil suit No. 99 of 2010* Nanyuki Law Courts.Decree in *civil suit no. 99 of 2010* dated 16th July, 2019.OB Entry Number 07/17/06/2022 at the Baragoi Police Station.Summons to Ileri Reipon from the local chief of Nachola location dated 7thJune, 2022.Agreements on how the money was to be paid dated 30th June, 2022 at Chief’s offices and 14th July, 20222 all between the parties witnessed by the chief



3. The applicant Administrator told the court that the respondent refused to surrender the proceeds of the litigation as per the agreements between the respondent and the deceased's family. He thus prayed that the respondent be compelled to surrender the properties for this succession cause so that the Administrator could proceed to the confirmation hearing and distribute the estate to the lawful heirs.
4. When cross-examined, the Administrator readily admitted that initially the respondent presented KSHS 300,000 but this was rejected because it did not constitute whole amount due to the estate. He added that the Kshs 740,000 was proceeds of compensation to the deceased estate paid out to the respondent who had obtained Letters of Administration Ad litem. It was added that there was lodged a criminal complaint against the respondent for the disappearance of the estate funds and the respondent was arrested but released after the family consented to give him time to make good the loss.
5. In re-exam, he affirmed that the family rejected partial payment of Kshs 300, 000 and wanted full surrender but the respondent failed to comply.
6. PW2 Cornelu Losokon Epipan gave an account similar to that of the Administrator confirming that the respondent refused and/or failed to surrender the property of the deceased herein.

The Respondent's Account

7. When the respondent Ileri Reipon attended court, he admitted that it was true that he received Kshs 740,000 as damages to the estate of the deceased herein following a fatal road accident that killed the deceased herein.
8. When asked during cross-examination to surrender those funds to the court or to the Administrator herein, he disclosed that he had spent all the money on himself. He admitted that he also received Kshs 298,000 as costs to the estate. He disputed signing the family consent to surrender the money to the family. He admitted that he was aware that it was a criminal offence to fail to distribute estate property to the rightful heirs.
9. In re-examination by his advocate Mr. Lenkidi, he pleaded illiteracy and asked the court to note that he had already spent the estate proceeds. He said that he took out the Letters of Administration Ad litem when the family failed to do so and even as he was taking out the letters, he involved them.
10. The duty of the court is to determine whether a case has been established against the respondent regarding the surrender of estate property.

Determination

11. The applicant did prove and the respondent did admit that the respondent was granted by the High Court in Meru in the year 2010 the Letters of Administration *Ad Litem* Limited for the purpose of instituting the suit to claim damages for the deceased estate.
12. There is irrefutable proof that the respondent received the funds after the successful litigation in *Nanyuki CMCC 99 of 2019*. The limitation of the letters of administration aforesaid was that he was to only prosecute the suit and preserve the property received. He was to also account to the court and to any substantive administrator of the deceased estate as is provided for in section 54 of the [Law of Succession Act](#) as read together with rule 14 of the Fifth Schedule to the Probate and Administration Rules:



54. Limited grants

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.

Rule 14 of the Fifth Schedule provides for Grants Ad Litem

14. Administration limited to suit

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.

13. The scope of this type of grant was explained in the authority of *Republic v Mbeere South Sub County Deputy Commissioner & 2 others; Ireri (Interested Party); Murage (Exparte)* [2022] KEELC 4737 (KLR)

14. I now turn to the issue of requirement of a grant. A grant ad Litem is normally granted to enable institution or prosecution of a suit where a full grant has not yet been issued. It is sometimes called a grant for special purposes. Where and if granted, it becomes enough to vest Locus standi to a party to prosecute or institute a suit. The very meaning of its name seems to suggest its adequacy for purposes of litigation. Ad Litem is Latin for “during the Litigation”. A person who gets the grant becomes an administrator ad Litem, also referred to as “Administrator ad prosequendum” in some jurisdictions, which essentially means “administrator during prosecution”. It is therefore a grant that is purpose-specific and the purpose itself is litigation....

17. It requires appreciation also that a grant ad Litem can also be given to defend a suit. Defence of a suit is also part of prosecution.”

14. The effect of the Grant of Letters of Administration *Ad litem* to the Respondent made him an express trustee as is provided for under section 3(1) and 3(2) of the *Trustees Act*.

15. The effect of trusteeship conferred by the Letters of Administration was well explained by the Court of Appeal in the authority of *Twalib Hatayan & another v Said Saggar Ahmed Al-Heidy & 5 others* [2015] KECA 713 (KLR) (Asike Makhandia, W.Ouko & K.M’Inoti JJA) explained thus:

“Trusts are created either expressly (by the parties) or by operation of law.

An express trust arises where the trust property, its purpose and beneficiaries have been clearly identified (see. Halsbury’s Laws of England vol 16 Butterworths 1976 at para 1452). In this case, we have a definite property and beneficiary. The purpose/intent for which the property was bought remains in dispute. This negates the existence of an express trust herein. In the absence of an express trust, we have trusts created by operation of the law. These fall within two categories; constructive and resulting trusts. Given that the two are



closely interlinked, it is perhaps pertinent to look at each of them in relation to the matter at hand.

A constructive trust is an equitable remedy imposed by the court against one who has acquired property by wrong doing. (see Black's Law Dictionary) (*supra*). It arises where the intention of the parties cannot be ascertained. If the circumstances of the case are such as would demand that equity treats the legal owner as a trustee, the law will impose a trust. A constructive trust will thus automatically arise where a person who is already a trustee takes advantage of his position for his own benefit (see. Halsbury's Laws of England *supra* at para1453). As earlier stated, with constructive trusts, proof of parties' intention is immaterial; for the trust will nonetheless be imposed by the law for the benefit of the settlor. Imposition of a constructive trust is thus meant to guard against unjust enrichment."

16. The foregoing principles were followed and applied by the same court in [*Juletabi African Adventure Limited & another v Christopher Michael Lockley*](#) [2017] KECA 118 (KLR) (ARM Visram JA, W Karanja JA, MK Koome JA. (as she then was but now the Chief Justice).

17. A Two-judge bench of the High Court [*In re Estate of Julius Mimano \(Deceased\)*](#) [2019] KEHC 10103 (KLR) (DN Musyoka, A,Ongeri JJ) had this to state about the nature and duties of an administrator:

"That would mean that they are trustees of the estate, and, indeed, the [*Trustee Act*](#), Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.

59. Secondly, personal representatives administer estates on the strength of legal instruments made to them by the probate court. The vesting of the estate of the deceased on the personal representatives by virtue of section 79 of the Act, flows from the instrumentality of the grant of representation. Upon representation being made, the grant holder then becomes entitled to exercise the statutory powers conferred upon personal representatives by section 82 of the Act and incurs the duties imposed on them by section 83 of the Act. Additional powers flow from and duties are imposed by other statutes, such as the [*Trustee Act*](#). Under section 82 of the Act, there are powers to enforce and defend causes of action on behalf of the estate, to sell or convert estate assets, to assent to vesting of bequests and legacies on the beneficiaries, among others. Acts done or actions taken on behalf of the estate or for the benefit of the estate would have to be accounted for. In other words, the personal representatives are bound to account for every action they take on behalf of the estate, for they exercise the powers on delegation.

60. Section 83 of the Act imposes duties on personal representatives to pay for the expense of the disposal of the remains of the deceased, to get in or gather or collect the assets of the estate, to pay for the expenses of the administration of the estate, to ascertain and pay out all debts and liabilities, and eventually to distribute the assets amongst the persons beneficially entitled. The discharge of these duties would naturally attract an account, in terms of the personal representative stating whether they discharged the said duties and disclosing



the expenses that they incurred in the process of discharge. In addition, section 83 of the Act has imposed a positive duty on personal representatives to specifically render accounts at two stages. The first instance is in the first six months of the administration. It is at this stage that they ought to account as to whether they spent any funds from the estate for the purpose of disposing of the remains of the deceased and, if so, how much. State whether they got in or gathered or collected or brought together all the assets that make up the estate. The getting in of the estate is critical, it should precede settlement of debts and liabilities and distribution of the assets. Indeed, these duties can only be discharged if there are assets sufficient to settle debts leaving a surplus for distribution. It would also be from the assets collected that the estate would have a pool of resources for administration expenses. Section 83(e) commands the personal representatives to produce in court a full and accurate inventory of the assets and liabilities, no doubt generated from the exercise of getting in the assets and ascertaining the debts of the estate. There is also an obligation to render an account of all their dealings with the assets and liabilities up to the point of the account. The second occasion for rendering accounts is at the completion of administration. The duty is stated in section 83(g) of the Act. The object of the second and final account is to give opportunity to the personal representative to demonstrate that they have complied with the duty in section 83(f) of distribution of the estate to the beneficiaries. The duty to account on those two occasions is imposed by statute. It envisages an account to the court, not even to the beneficiaries. The powers exercised by the personal representative flow from a court instrument, the court is entitled to know whether those powers have been properly exercised, and whether the duties imposed have been properly discharged. Being a statutory duty to account to the court, the personal representative does not have to wait for a court order directing them to render account, they must render the accounts as a matter of course. The matter of the duty to render accounts is so critical that default to do so is listed in section 76(d)(iii) of the Act as one of the grounds upon which the court may consider revoking a grant.

61. The point being made here is that the law commands rendering of accounts by personal representatives whether the deceased died testate or not.”
18. Following his admission that he misapplied the funds, the court is satisfied that there are reasonable grounds to have the respondent prosecuted for breach of his trust duties under sections 94 and 95 of the *Law of Succession Act* providing thus:
 94. Neglect or misapplication of assets by personal representatives

When a personal representative neglects to get in any asset forming part of the estate in respect of which re-presentation has been granted to him, or misapplies any such asset, or subjects it to loss or damage, he shall, whether or not also guilty of an offence on that account, be liable to make good any loss or damage so occasioned.
 95. Offences by personal representatives
 - (1) Any personal representative who, as regards the estate in respect of which representation has been granted to him-



- (a) wilfully or recklessly neglects to get in any asset forming part of the estate, misapplies any such asset, or subjects any such asset to loss or damage; or
- (b) wilfully fails to produce to the court any such inventory or account as is required by the provisions of paragraphs (e) and (g) of section 83; or
- (c) wilfully or recklessly produces any such inventory or account which is false in any material particular; or
- (d) knowing or having reason to believe that the estate will prove to be insolvent, continues to administer it without petitioning for administration thereof in bankruptcy, shall be guilty of an offence, and shall be liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

19. Relatedly, if the administrator herein had failed to move as today to collect the estate funds, he himself would have been liable to be prosecuted for neglect to perform his duties and that being so, the court makes the following considered orders:

1. Under section 94 of the *Law of Succession Act*, the Administrator herein shall identify all the assets of the respondent herein and immediately commence processes to attach the properties of the respondent to recover the full sums due to the estate herein unless the respondent sooner but not later than 30 days of this order deposit in court the full sums lost and/or misapplied by himself.
2. Under section 95 of the *Law of Succession Act*, the court being satisfied as to the criminal conduct of the respondent herein, calls upon the Administrator to formally lodge a complaint at the nearest police station for the purposes of instituting criminal prosecution. In the meantime, the respondent is placed under arrest and shall be escorted by the police and the complainant to the said nearest police station for the related processes and onward prosecution for the criminal offence of misapplication and/or criminal loss of estate funds totalling Kshs 1, 018,000/-. The administrator and his witnesses shall record fresh statements for the criminal prosecution.
3. Costs to the Estate.

Right of appeal is 30 days.

DATED, READ AND SIGNED AT MARALAL LAW COURTS THIS 18TH DAY OF AUGUST, 2025

HON.T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

MARALAL

Present

Administrator

Respondent

Mr. Kihoro ADV for the Administrator

Mr. Lenkidi ADV for the respondent

