



**Kiarie & 2 others v Karuga (Miscellaneous Succession Application  
57 of 2019) [2023] KEMC 309 (KLR) (3 August 2023) (Ruling)**

Neutral citation: [2023] KEMC 309 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
MISCELLANEOUS SUCCESSION APPLICATION 57 OF 2019  
PA NDEGE, SPM  
AUGUST 3, 2023**

**BETWEEN**

**GABRIEL MAINGI KIARIE ..... 1<sup>ST</sup> RESPONDENT**

**ANDREW MUCHAI KIARIE ..... 2<sup>ND</sup> RESPONDENT**

**JOSEPH GATHIGA ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**REBBECA WAMBUI KARUGA ..... APPLICANT**

**RULING**

1. Grant ad Colligenda bona, is made where the assets are of perishable or precarious nature and need quick attention. It is intended to give administrative power to collect and preserve the assets of the estate, pending making of a full grant. It is made when some urgent action is needed in relation to the assets and there may be a delay in obtaining a full grant of representation. It is therefore not intended to be permanent. Provisions for the limited grant ad colligenda bona are found in section 67 of *Law of Succession Act* and rules 36 and 37 of *Probate and Administration Rules*.
2. There is no doubt that an issue pertaining to education of children is an urgent matter that requires attention and urgency of the court. According to article 53(1) of the *Constitution* of Kenya 2010, children are entitled to compulsory basic education.
3. However, this matter has delayed in court since 2019, and as aforesaid grant ad colligenda bona ought to be a temporary grant pending making of full grant of representation. Estate of the deceased's cannot be perpetually held under temporary administration. In a ruling dated 14.10.2019, Hon. Limo B. Benjamin, Senior Resident Magistrate (SRM), directed the parties herein to apply for a full grant as soon as practicable. The 1<sup>st</sup> Respondent, presumably acting on the advice, filed, obtained and confirmed a full grant to the estate herein on 20.11.2020. Again on 16.03.2023, in a ruling in this latest application herein, I required the applicant herein to explain why this miscellaneous application has



never been concluded despite there being a substantive petition and a full grant already confirmed for this estate.

4. In the absence of any explanation, the full grant should offer a permanent solution which will cater for the share of all the dependents, including the applicant herein. It is not proper that an estate of a deceased should be subjected to multiple or parallel succession causes, permanent or temporary, as is sought for in the application herein. My humble opinion herein is that the parties to this cause should pursue the petition for the full grant to ensure the beneficiaries get their portions of the estate. Let me clarify that issues pertaining to estates of deceased are handled in a succession cause, under the *Law of Succession Act*, and not the *Children Act*.
5. This application must therefore be concluded as it was for temporary order which has since been overtaken by the filing of a petition No 223 of 2019 for a full grant herein. This miscellaneous file/ cause is therefore deemed as spent, and therefore no longer necessary and the latest undated Notice of Motion filed on February 23, 2023, subject of this ruling, be and is hereby dismissed and this miscellaneous file closed.
6. It is so ordered

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 03RD DAY OF AUGUST 2023**

**HON A.P. NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the Presence of

Applicant: N/A

Applicant's Counsel: N/A

1st Respondent: N/A

2nd Respondent: N/A

3rd Respondent: N/A

