

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
(FAMILY DIVISION)

SUCCESSION CAUSE NO. 423 OF 2015

IN THE MATTER OF THE ESTATE OF NASHON JUMA AGANGO alias
NASHON JUMA ASANGO (DECEASED)

GEORGE OJWANG AGANGO

LUCY DAMAR AGANGO.....PETITIONERS/RESPONDENTS

VERSUS

EMMY ANDISI AGANGO.....OBJECTOR/APPLICANT

RULING

1. Before this court is a petition for letters of administration *ad litem* dated 14th February 2025 by the applicant seeking a grant of representation *ad litem* for the purposes of filing suit/defending a suit. The applicant seeks the said grant on the grounds that the deceased's property has been fraudulently transferred to a third party without the consent of the applicant or the other beneficiaries, and she intends to institute a suit to obtain justice.
2. She stated that the deceased left behind properties which include Plot No.5815/1/MN/CR/24470, which she contends is her matrimonial home, and that the same was sold by the respondents, who are her stepchildren, without her knowledge or consent, therefore rendering her homeless.
3. The applicant further contended that the respondents filed two parallel Succession Causes, to wit, 296 of 2012 and 423 of 2015, and

obtained certificates of confirmation, which were later revoked. As a result, the estate remained abandoned, which allowed the respondents to engage in fraudulent activities. She averred that she needs the grant of letters of administration ad litem to enable her to file a suit in the Environment and Land Court so that an order reverting the said parcel of land to the estate can be made.

4. In response, the respondents filed a replying affidavit sworn by the 2nd respondent on 27th May 2025. She termed the application as an afterthought and an abuse of the court process, as it is a replica of the application filed by the applicant in the High Court Succession Cause No. E079 of 2023, which application was withdrawn.
5. She stated that a grant of letters of administration of the deceased's estate was issued to them on 31st March 2016 and confirmed on 28th February 2020. Thereafter, the deceased's beneficiaries jointly agreed to have Subdivion No.581(Original Number 976/33/7 Section 1 Mainland North sold and proceeds distributed equally among themselves. After payment of capital gains tax, legal fees, and other incidental costs, the balance was distributed amongst all the deceased's seven beneficiaries, including the objector, with each getting Kes. 1,000,000/-. In addition to getting the said share of the proceeds, it was agreed that the objector/applicant would stay on part of the property and continue to collect rental income from the rented rooms for a year after the sale, after which she would give vacant possession to the purchasers. The applicant refused to give vacant possession, resulting in the filing of CMC ELC No. E053 of 2021, vide

which orders to vacate were sought. Orders to that effect were issued on 22nd April 2021.

6. She averred that the property was rented out to tenants for which she collected rent from and was not her matrimonial home. The deponent stated that the applicant's matrimonial home is on Title No. Gem/Kowour/Kotieno/1087. It was further stated that the applicant is a co-administrator of the estate by virtue of the orders issued on 2nd December 2022 and that she had come to court with unclean hands as she is a beneficiary of the sale proceeds.
7. The applicant filed a supplementary affidavit sworn on 17th June 2025. She stated that the respondents' averments were not factual and that they fraudulently procured the grant in Succession Cause 296 of 2012 without her knowledge. She stated that they only indicated two people as beneficiaries of the deceased and used the said grant to illegally transfer land from the deceased to their name, which they later sold for Kes.10,000,000/-. Further, she filed a restriction on the land, and the entries were expunged from the register.
8. She reiterated that the subject property is her matrimonial property, as that is where she used to reside with the deceased from the time they got married, and that it was also in the said house that they raised their children. She averred that the property was hers as she was the widow of the deceased.

- 9.** She stated that she is not a party to ELC Case E053 of 2021 and that the monies referred to by the respondents are rental incomes received on her behalf by the respondents. She urged the court to allow the petition.
- 10.** The matter was canvassed by way of written submissions. The objector/applicant, through her advocates, filed written submissions dated 11th June 2025. Counsel relied on section 54 of the Law of Succession Act and submitted that the applicant has a genuine claim on the property, considering that it was her matrimonial home, and the petitioners herein did not have any capacity and/or authority to proceed with its sale.
- 11.** On the other hand, the respondents, through their advocates Soni & Associates LLP, filed written submissions dated 1st July, 2025. Counsel submitted on two issues, namely, whether the objector is entitled to a grant of representation ad litem, and whether the said petition for ad litem has been overtaken by events.
- 12.** On the first issue, counsel reiterated the respondents' position and submitted that the subject property was sold on 16th November 2020. The proceeds were distributed amongst the seven beneficiaries, including the objector. It was submitted that the objector had not proved any urgency to warrant issuance of the limited grant ad litem.

13. On the second issue, counsel submitted that as per the court order of 2nd December 2022, the objector is a co-administrator of the estate, and all that is left is to complete the process of filing the application for confirmation of grant. Counsel urged the court to dismiss the application.

14. I have carefully considered the application before me and the responses thereto. I note that under section 47 of the Law of Succession Act, this Court has the jurisdiction to entertain any application and determine any dispute under the said Act, and to pronounce such decrees and make such orders therein as may be expedient. Rule 73 of the Probate and Administration Rules provides for the inherent powers of the Court. It states that: -

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

15. Section 54 of the Law of Succession Act gives this Court the jurisdiction to make limited grants. It states 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.”

16. In the case of **Gabriel Macharia Njoroge v Absa Bank Kenya Plc [2021] KEELC 805 (KLR)** it was held that: -

“From the foregoing, 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. Notably, however, a limited grant is made due to the exigencies of matters that present an urgent need to file or join or defend suit on behalf of the estate and which cannot wait until a full grant is obtained.”

17. Further, the court, in the case of *In re Estate of the Late Antonio Angelo Costabir (Deceased)* [2024] KEHC 15472 (KLR), stated that: -

“Rule 73 Probate and Administration Rules gives the Court inherent powers to make orders in the interest of justice or to prevent abuse. The rule imposes a duty on the Court to make orders to protect from waste or to preserve the estate of a deceased. 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

one to file a succession cause. A grant of representation is only necessary where one intends to file a civil suit to protect or defend the estate against third parties.”

From the foregoing, 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.”

18. There is a grant issued to the respondents and the applicant pursuant to the judgment delivered by Onyiego, J, on 2nd December 2022. The respondents and the applicants, however, hold diametrically opposed views regarding what the objector/applicant calls her matrimonial home. The questions she has raised regarding the alleged sale deserve to be considered by the court with jurisdiction. It is clear to me that there is unlikely to be a meeting of the minds.
19. Since the applicant holds what appears to me to be a sincere belief that the said property is recoverable, I see no reason to deny her wish. In the circumstances, and in exercise of my jurisdiction under section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, I allow the petition dated 14th February 2025. As this is a succession dispute between close family members, each party shall bear her own costs.
20. It is ordered.

**Dated and signed in Mombasa, this 19th day of November 2025.
Delivered virtually through Microsoft TEAMS.**

**Gregory Mutai
JUDGE**

In the presence of: -
No appearance for the parties; and
Arthur – Court Assistant.

Original