

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE NO. 163 OF 2025

**IN THE MATTER OF THE ESTATE OF THE LATE WILLIAM CHESILUT
LELEI (DECEASED)**

GLEDI LELEI 1ST
PETITIONER/RESPONDENT

TIMOTHY MAIYO 2ND
PETITIONER/RESPONDENT

=AND=

DORCAS CHEROBON
OBJECTOR/APPLICANT

Coram: Justice R. Nyakundi
M/s Isiaho Sawe & Co. Advocates
M/s Ketter N.K. Advocates

RULING

- 1.** Before me for determination is summons dated 17th September, 2025 expressed under the provisions of section 3 & 3A of the *Civil Procedure Act, Rule 3(2) of the High Court (Practice and Procedure) Rules* of the Judicature Act. The Objector seeks orders as follows:
 - a. Spent.*
 - b. That the status quo ante the death of the deceased herein be maintained pending the institution of the substantive succession proceedings.*
 - c. That this Honorable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.*
- 2.** The application is supported by an affidavit sworn by Dorcas Cherobon and on grounds enumerated as follows:

- a. That the petitioners moved this court and obtained a limited Grant of Letters of Administration Ad Colligenda Bona based on misrepresentation and/or non-disclosure of material facts.
 - b. That the Petitioners/Respondents are interfering with the status quo that existed during the lifetime of the deceased herein at the expense of the 3rd house.
 - c. That the Objector/Applicant in the above premises is seeking revocation of the aforesaid Limited Grant of Letters of Administration Ad Colligenda Bona.
 - d. That there is need for this court to make preservatory orders to preserve the estate of the deceased herein before succession proceedings can be instituted.
 - e. That the ex-parte orders currently in force were issued oblivious of the fact that the three (3) widows of the deceased are alive and rank first in priority as against the Petitioners herein.
 - f. That the Petitioners/Respondents may take advantage of the Grant in their favor at the expense of the 3rd house hence rendering appropriate orders necessary.
 - g. That in the above circumstances, it is in the best interest of justice that appropriate orders be issued by this Honorable Court pending the determination of the summons filed herewith.
 - h. That the Respondent/Petitioners will not be prejudiced in any way should the orders sought issue as they will have an opportunity to ventilate their case on merit.
- 3.** In response to the application, the Respondents swore a replying affidavit in which they stated that they are beneficiaries of the estate and personal representatives of estate pursuant to the Limited Grant of letters of Administration Ad Colligenda Bona issued on 8th August, 2025, hence competent to respond in the issues raised herein.
 - 4.** They deposed that the limited grant was lawfully issued to the Respondents herein for the narrow purpose of continuing construction

of a building on land parcel NANDI/MUTWOT/325 so that the same is not destroyed by harsh weather conditions and to preserve the Estate. That the applicant alleges to be the 3rd wife of the deceased and to have been allocated the land by her late mother-in-law. However, such allegations are false, misleading and legally untenable, as the land was registered in the name of the deceased who alone had capacity to deal with it.

5. The Respondents depose that in the previous land dispute relating to the said parcel, that is, KAPSABET ELC NO. E016 OF 2022, the deceased himself swore an affidavit expressly stating that he had never contracted any form of marriage with the applicant and that she has never been his wife for any purpose whatsoever.
6. According to the Respondents, the applicants' claim of being a 3rd wife is therefore a falsehood designed to mislead this Honorable Court and to obtain undue advantage succession proceedings. That the area chiefs where the deceased resided both in Mutwot, Nandi County and Ngenyilel, Uasin Gishu County have issued letters confirming the genuine beneficiaries of the Estate of the deceased.
7. They further deposed that in any event, the deceased had during his lifetime by a valid agreement gifted the said parcel to the applicant, and the limited Grant was only meant to ensure that ongoing construction on the parcel is preserved pending full succession proceedings. That the contents of paragraphs 20,21,22 and 35 of the Applicant's supporting affidavit dated 17th September, 2025 are false, as the court in Kapsabet had already found that the applicant/objector was not in possession and had no right to enter the property, as clearly highlighted in its ruling dated 11th May, 2023 at paragraphs 22, 23 and 28.
8. The deponents further stated that they are ready to have a site visit by the DR to ascertain the true position of the occupancy of the land. That the applicant's reliance on status quo orders issued in land case

Kapsabet ELC NO. E016 OF 2022 is irrelevant, as the said case was withdrawn and the orders lapsed, and she cannot rely on withdrawn proceedings to sustain the instant application.

- 9.** It is the Respondents' position that the applicant's invocation of section 66 of the Law of Succession Act is misplaced, as priority is considered only at the stage of appointment of administrators for a full Grant of Representation, not in relation to a limited Grant ad Colligenda bona issued strictly for preservation. That all widows and children of the deceased, if proved, stand on equal footing under Section 66(c) of the Act, and the Limited Grant does not prejudice the rights of any beneficiary in the eventual succession cause.
- 10.** That the family are in the process of filing succession proceedings whereby the applicant will have an opportunity to ventilate the issues raised in the present application. Further that revocation of the said limited Grant would expose the estate and ongoing construction to wastage and deterioration, contrary to the protective intention of this Honorable Court.
- 11.** The respondents further filed a supplementary replying affidavit in which they deposed as follows:
 - a. That the deceased herein, William Cheslut is the registered owner of all that parcel of land registered in his name in 1964.
 - b. That the deceased before his demise had done survey on the property for transfer to his children who had not received their portions.
 - c. That the deceased had allocated 7 acres to school which he initiated construction and sadly passed on before completion.
 - d. That all the averments by the applicant are falsehoods as she was not in the property which is the finding of court.
 - e. That the deceased passed on when the construction had reached the tail end and upon grant of the ad colligenda limited Grant, we

have made progress to ensure completion of the house to preserve it.

- f. That the applicant does neither lives on the suit property and nor was her house destroyed after Grant of the said Limited Grant.
 - g. That the sole reason why the construction stalled was due to the applicant's application which suit was withdrawn.
 - h. That we reiterate that all widows and children of the deceased, if proved, stand on equal footing under section 66(c) of the Act, and the Limited Grant does not prejudice the rights of any beneficiary in the eventual succession cause.
 - i. That the family are in the process of filing succession proceedings whereby the applicant will have an opportunity to ventilate the issues raised in the present application.
 - j. That revocation of the said limited grant would expose the estate and ongoing construction to wastage and deterioration, contrary to the protective intention of this Honorable Court.
- 12.** In further response, the applicant filed a replying affidavit in which she deposed as follows:
- a. *That in reply to paragraph 3 of the Replying affidavit, the ongoing construction does not belong to the deceased as alluded or at all. Therefore, the insinuation created that the same belongs to the deceased is not only untrue but unsupported by any documentary evidence.*
 - b. *That in the above premises, the order issued by this court is being used by the Respondents to continue an illegality pending the determination of the substantive succession proceedings.*
 - c. *That the construction above is therefore not for the benefit of the estate of the deceased herein as alluded or at all.*
 - d. *That contrary to the averments made under paragraph 4 of the replying affidavit, it is indeed within the personal knowledge of the Respondents that the issue of my ownership often acres*

comprised in L.R No. Nnadi/Mutwot/325 was indeed a subject of Kapsabet ELC No. E016/2022 in which the deceased herein was directed to allow me to continue utilizing the said portion which the deceased personally later demarcated on 3/12/2022.

- e. That it is also common knowledge that the deceased herein was only registered over the aforesaid parcel of land and purely as a trustee hence the reason he did not object to the allocation of the ten acres to me by his late mother.
- f. That the issue of the legitimacy or otherwise of the marriage between the deceased and I is one to be determined by this court during distribution of the deceased's estate.
- g. That beside the above, the ELC court sustained the status quo on my utilization of the 10 acres allocated to me by my late mother-in-law pending the determination of the ELC matter.
- h. That unfortunately, the deceased herein passed away before the above ELC matter was determined.
- i. That the best interest of justice can only be achieved by sustaining the aforesaid status quo pending the determination of substantive succession proceedings.
- j. That I further pray that this court directs that the substantive succession proceedings be filed on priority basis to enable the court determine the true beneficiaries of the deceased herein with finality.
- k. That it ought also be noted that the chief was at a loss as to how he exempted my children and I as beneficiaries of the estate herein hence rendering hence rendering appropriate orders necessary.
- l. That from the evidence of the chief, it can be safely concluded that my children and I have already been deemed not to have an interest in the estate herein hence the reason the beneficiaries

of the deceased's other houses have taken control of the estate to my detriment.

- m. That averments made under paragraph 6 of the replying affidavit are preemptive of the substantive succession proceedings which are yet to be filed. It is through the said proceedings once filed that this court will render itself as to who the deceased's legitimate beneficiaries are.*
- n. That I strongly oppose the contents of the chief's letters for non-disclosure of material facts as to the true beneficiaries of the deceased. This informed my counsel's prayer to the court to have the chief, Mutwot location summoned to clarify who the true beneficiaries are. His evidence was shaky and uncorroborated especially when he admitted on oath that he did not consult me albeit having been privy to the land dispute between the deceased herein and I.*
- o. That it is obvious from the above that the list of beneficiaries that was supplied to the chief by the Respondents was calculated at disinheriting my children and I albeit being the deceased's legitimate beneficiaries.*
- p. That this court ought to be cautioned that there is a likelihood of legitimate beneficiaries being left based on malice and bad faith as obtains in this case.*
- q. That the contents of paragraph 8 of the replying affidavit is a confirmation that indeed the ongoing construction is indeed not for the benefit of the estate herein.*
- r. That the allegation of the disputed portion constituting a gift inter vivos is also a matter for determination by this court during the distribution of the estate.*
- s. That the allegation that the construction should proceed purely on the belief that the portion constitutes a gift inter vivos is farfetched and disputed.*

t. *That as to occupation of the disputed portion, I wish to state that I was in occupation of the house constructed on the ten acres awarded to me by my late mother-in-law from the year 1971 until August, 2024 when my house was demolished by the Respondents or their agents.*

Analysis and determination

13. The matter before this court arises from an application seeking revocation of a limited Grant of Letters of Administration Ad Colligenda Bona that was issued to the Respondents on 8th August, 2025. The deceased, William Chesilut Lelei, passed on leaving behind an estate that includes land parcel number Nandi/Mutwot/325. On this parcel, the deceased had initiated construction of a building intended to serve as a school, having allocated seven acres for this purpose. The construction had progressed to what the Respondents describe as the ‘tail end’ when the deceased passed on. It is this ongoing construction that largely forms the centerpiece of the present dispute.

14. The High Court has a broad jurisdiction under Section 54 and 67 of the Law of Succession Act in relation to the deceased estates. The court has the power to make grants of representation, orders concerning the validity of WILLS and orders providing for the appointment and removal executors and administrators. This jurisdiction also includes the power to make limited power of representation to serve a specific purpose like prosecution and defending of suits on behalf of the estate or one referred to ADI COLIGENDA BONA under Section 67 of the Act for collection and perseveration of the Estate Assets.

(a) Unlike a full grant of representation, which vests general powers in the executor or administrator to act on behalf of the deceased’s estate until the administration of the estate is complete, a limited grant typically vests an administrator with confined powers to act on behalf of an estate for a specific

purpose or for a specific time. 1 (b)Limited grants are designed to accommodate specific circumstances arising in an estate where it is not possible to obtain a full grant of representation. The limitations placed on such a grant may include a specific power or action that the grant permits and a time frame within which the grant is operable. The limitations of time and purpose or on specific terms are designed to accommodate the special needs of a particular estate.

- 15.** The borne contention flows from the procedural defects by the Applicant who was issued with the special grant AD COLIGENDA BONA without inclusivity of the other heirs to the estate. I am conversant with provisions of Section 76 of the Law of Succession Act which clothes the court with power to revoke any such grant which is in violation of any of the grants stated therein in the statutory framework. The predominant question is whether revocation of this grant is necessary at this stage when the beneficiaries ought to move with speed to have the petition for the grant of representation lodged in the probate registry so as to conclusively determine the legal administrators under Section 66 of the Act. I am made to understand from the affidavits that the objectors are aggrieved with the preservation of the property which forms part of the estate of the deceased. This special grant in question is a time bound instrument serving a particular purpose in the interim period as heirs to the estate come up with a propriate names to be appointed administrator to the estate.
- 16.** The Objector contends that the grant was procured through misrepresentation and non-disclosure of material facts, that she is the third wife of the deceased and therefore ranks in priority for administration of the estate, and that the construction in question does

not belong to the deceased's estate. She further avers that the ten acres on which the construction sits were allocated to her by her late mother-in-law, that the deceased held the land merely as a trustee, and that there was a prior land dispute in Kapsabet ELC No. E016 of 2022 concerning her entitlement to this portion. The Objector seeks to have the status quo ante the death of the deceased maintained and the limited grant revoked.

17. The Respondents, on the other hand, maintain that they are beneficiaries of the estate and that the limited grant was lawfully obtained for the narrow and specific purpose of continuing construction of the building so that it is not destroyed by harsh weather conditions. They assert that the Objector's claim to be the third wife is a falsehood, pointing to an affidavit sworn by the deceased himself in the previous land case in which he expressly denied ever contracting any form of marriage with the Objector. The Respondents further argue that the limited grant does not prejudice the rights of any beneficiary in eventual succession proceedings and that revocation would expose the estate to wastage and deterioration.

18. **Sections 54 and 67 (1)** of the *Law of Succession Act*, Cap 160 of the Laws of Kenya and Rule 36 of the Probate and Administration Rules provide the circumstances under which a Special Limited Grant may be issued by the Court

Section 67 (1) of the *Law of Succession Act*:

“(1) No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for such grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.

(2) A notice under subsection (1) shall be exhibited conspicuously in the court-house, and also published in such other manner as the court directs.

Rule 36 (1) of the Probate and Administration Rules, 1980 is instructive and it provides as follows:

Grant ad colligenda bona under s. 67 of the Act

(1) Where, owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defuncti of the estate of the deceased."

19. Rule 36 of the *Probate and Administration Rules* provides for a limited grant of letters of administration Ad Colligenda bona for purposes of collecting and preservation of the estate. It provides: -

"Where owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defunct of the estate of the deceased."

20. The grant ad colligenda bona is, by its very nature, a limited and interim measure. It is made pending the institution of full succession proceedings and the eventual making of a full grant of representation. Its scope is deliberately narrow, being restricted to the collection and preservation of the estate. The rationale for such a grant was well articulated in the Court of Appeal decision in *Morjaria vs. Abdulla* (1984) KLR 490, where it was held that such a grant would be appropriate where the assets are in a precarious state and urgent

action needs to be taken to preserve the estate. The grant is not intended to confer upon the holder all the powers of a full administrator. Rather, it is a protective mechanism designed to prevent waste, deterioration, or dissipation of estate assets during the interim period before full succession proceedings can be instituted and determined.

- 21.** The first issue that I need to look into is whether the grant in the present case was properly obtained. Rule 36(1) contemplates that any person may apply for such a grant where special circumstances exist and the urgency is so great that a full grant cannot be obtained in sufficient time to meet the necessities of the case. The language of the rule is permissive as to the identity of the applicant, stating that "any person may apply." This stands in contrast to the provisions governing full grants of representation, where priority among beneficiaries becomes a relevant consideration under section 66 of the Act. The distinction is significant and deliberate. A limited grant for collection and preservation is not concerned with the ultimate distribution of the estate or with conferring final administrative authority. It is concerned solely with preventing immediate harm to estate assets.
- 22.** In the present case, the Respondents applied for and obtained the grant on the basis that there was ongoing construction on the deceased's land that required completion to prevent deterioration from harsh weather conditions. The evidence before the court indicates that the deceased had himself initiated this construction, having allocated the land for the purpose of establishing a school. The construction had progressed to an advanced stage at the time of the deceased's death. It is common knowledge that incomplete buildings left exposed to the elements suffer progressive deterioration. Rain, wind, and sun cause damage to unfinished structures, undermining foundations, weakening walls, and rendering materials unusable. What was substantially

complete can quickly become a ruin. What represented significant investment can swiftly transform into waste.

- 23.** The Objector challenges the grant on the basis that she is the third wife of the deceased and therefore enjoys priority under section 66 of the Act. This submission misconceives the nature and purpose of a limited grant ad colligenda bona. Section 66 of the Act, which sets out the order of priority for purposes of granting representation, applies to full grants of letters of administration. It determines who, as between competing beneficiaries, should be appointed as the administrator with full powers to administer and distribute the estate. A limited grant for collection and preservation operates on different principles. Its purpose is not to confer administrative authority for purposes of distribution but to authorize specific, limited actions necessary to prevent immediate harm to estate assets. The holder of such a grant does not stand in the shoes of a full administrator and does not exercise the broad discretionary powers that a full grant confers.
- 24.** The Objector further contends that the construction in question does not belong to the deceased's estate. She asserts that the ten acres on which the building stands were allocated to her by her late mother-in-law and that the deceased held the land merely as a trustee. This raises a fundamental question about the proprietary status of the asset that the limited grant purports to preserve. If the construction genuinely does not form part of the deceased's estate, then the grant would indeed be inappropriate, as there would be no estate asset to preserve. However, the evidence before the court shows that the land in question, being land parcel number Nandi/Mutwot/325, is registered in the name of the deceased. Under the Registered Land Act, registration confers an indefeasible title on the registered proprietor. The deceased was the registered owner of this land at the time of his death.

- 25.** The Objector's claim that the deceased held the land as a trustee is a serious assertion that strikes at the root of the registered title. Such claims are not to be lightly accepted or rejected. They require careful examination of evidence and legal argument. The appropriate forum for such examination is the full succession proceedings, where all parties will have the opportunity to lead evidence and make comprehensive submissions. It may well be that the Objector will be able to establish her claims in those proceedings. It may equally be that her claims will be rejected. That is not a matter for determination on this application. What is clear, however, is that the land was registered in the deceased's name and that the deceased himself initiated the construction during his lifetime. Prima facie, therefore, both the land and the construction upon it form part of the deceased's estate, subject to any claims that may be established in due course.
- 26.** The question then becomes whether the act of continuing or completing construction that was initiated but not finished by the deceased falls within the concept of collection and preservation of estate assets. The traditional understanding of an ad colligenda bona grant is that it authorizes the collection of assets, the receipt of income, and the taking of steps necessary to preserve assets from waste or deterioration. It does not ordinarily authorize major new transactions or the initiation of projects that the deceased had not undertaken. However, the present case does not involve the initiation of a new project. The deceased had already commenced the construction. He had already invested resources in it. He had already brought it to an advanced stage. The question is not whether the grant holder can embark on new construction projects but whether the grant holder can complete what the deceased had substantially accomplished in order to prevent the loss of what has already been invested. Preservation, properly understood, encompasses whatever

steps are reasonably necessary to maintain the value of estate assets pending the making of a full grant.

- 27.** The wording of the grant in the present case is also significant. The grant was not issued in general terms authorizing the Respondents to deal with the estate as they might see fit. It was issued for the narrow and specific purpose of continuing construction of the building on the identified parcel so that the same is not destroyed by harsh weather conditions. This precise formulation of the grant's purpose reflects a judicial appreciation that completing substantially finished construction is a form of preservation rather than a new venture.
- 28.** The Objector has raised concerns about her house having been demolished and about being excluded from the list of beneficiaries. These are serious matters if they are true. However, the evidence before the court suggests a different picture. The area chief of the area where the deceased resided issued letters identifying the beneficiaries of the estate, and those letters do not include the Objector or her children. The Respondents deny that any house belonging to the Objector was demolished after the grant was issued. These are contested factual matters that cannot be definitively resolved in an application of this nature. They are matters that properly belong to the full succession proceedings, where the court will have the benefit of oral testimony, cross-examination, and comprehensive submissions.
- 29.** What is clear, however, is that the limited grant as issued does not prejudice the Objector's ability to assert her claims in the full succession proceedings. The grant does not distribute any assets. It does not confer ownership. It does not determine who the beneficiaries are. It authorizes only the specific act of completing the construction to prevent its deterioration. If the Objector succeeds in establishing in the succession proceedings that she is indeed a wife of the deceased, that the land was held in trust for her, or that she has any other entitlement to the disputed portion, those findings will be given full effect in the

eventual distribution of the estate. The completion of the building in the meantime does not alter the substance of her claims or diminish her prospects of success. Indeed, if her claims succeed, she will benefit from having a completed building rather than a deteriorating ruin.

30. I am satisfied that the grant in this case was properly issued. The Respondents, as acknowledged children of the deceased, had standing to apply for the grant. Special circumstances existed in the form of substantially completed construction that was at risk of deterioration. Urgency was present because weather damage to incomplete buildings is progressive and irreversible. The grant was narrowly tailored to authorize only the specific action necessary to preserve the asset. The grant does not prejudice the Objector's ability to assert her claims in full succession proceedings. The disputed questions about the Objector's status and entitlement are matters for determination in those proceedings, not matters that vitiate the protective grant that has been issued.

31. In the end, I therefore find that there is no basis for revoking the limited Grant of Letters of Administration Ad Colligenda Bona issued on 8th August, 2025.

(a) That the application is accordingly dismissed.

(b) That the limited grant shall remain in force for the specific purpose for which it was issued, being the completion of the construction on land parcel number Nandi/Mutwot/325 to prevent its deterioration. However, to ensure that this matter does not remain in a state of limbo and that all disputed questions are resolved expeditiously,

(c) That I hereby direct that the Respondents shall file the substantive succession proceedings within sixty (60) days from the date of this judgment. This ruling is without prejudice to any claims that any party may wish to assert in the full succession proceedings.

(d) That all parties will have full opportunity to ventilate their claims and contest any disputed issues in those proceedings, including but

not limited to questions of the status of the Objector as a beneficiary, the ownership and proprietary interests in the disputed land, and the legitimacy of the construction being completed.

(e) That the refurbishment of part of the estate is meant to ensure further wastage, damage, dissipation, deterioration, and depreciation of the Asset in the interim period pending the petition of the full grant of representation in this intestate estate.

(f) That there is no evidence that the special grant has conferred any such inheritance rights to the holder of such legal instrument issued under Section 67 of the Law of Succession Act.

32. Each party shall bear their own costs of this application.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 1ST DAY OF DECEMBER, 2025

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R. NYAKUNDI
JUDGE