

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CIVIL APPEAL NO. E125 OF 2024

ELIJAH KEBORO.....
APPELLANT
VERSUS
YASSIN AMUKOYA.....
RESPONDENT

RULING

1. This is an appeal against the ruling of Hon. Thomas Obutu (SPM), delivered on 23rd November 2023 in Mumias, civil suit no. 43 of 2022. By that ruling, the learned magistrate dismissed a preliminary objection filed by the appellant, Elijah Keboro, which sought to strike out the suit for lack of capacity
2. The respondent, Yassin Amukoya, is the adult son of the late Saida Inzayi Musumba, who died in a road traffic accident on 25th January 2022. On 23rd March 2022, the Magistrates' Court granted him a limited grant of letters of administration ad litem for the purpose of instituting legal proceedings. Acting under this authority, he filed a suit against the appellant for damages arising from his mother's death.
3. The appellant's preliminary objection contended that the grant was issued in violation of the Law of Succession Act, Cap 160, and was therefore invalid, rendering the suit incompetent.

4. Being dissatisfied with the dismissal of his objection, the appellant filed this appeal, raising the following grounds:
 - a. That the trial magistrate erred in law and fact by finding the respondent had locus standi to sue.
 - b. That the trial magistrate erred by disregarding submissions on the invalidity of the grant.
5. The appellant prays for the appeal to be allowed, the lower court's ruling set aside, and the respondent's suit dismissed with costs.
6. The substantive issue for this court's determination is whether the limited grant of letters of administration ad litem issued to the respondent conferred upon him the locus standi to institute the lower court suit on behalf of the deceased's estate.

Analysis

7. As a first appellate court, I am mandated to subject the entire evidence and the lower court's reasoning to a fresh and exhaustive analysis while bearing in mind that I did not have the advantage of hearing the witnesses. In **SELLE and Another vs Associated Motor Boat Company Ltd & Others [1968] 1. E.A 123** it was stated as follows:

“...this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind [the fact] that it has neither seen nor heard the witnesses and should make due allowance in

this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence."

8. The appellant's argument is based on a narrow and respectfully, incorrect understanding of succession law. He assumes that a grant of representation is a single, uniform document that can only be obtained through one full process. That assumption is wrong.
9. The Law of Succession Act in Section 54 explicitly provides for the making of a limited grant for the whole or a part of the estate of a deceased person. Such a grant is made for a special purpose, which includes the purpose of instituting legal proceedings. The provision's intent is to offer an expedient legal pathway for dependants to seek redress, especially in wrongful death claims, without first navigating the entirety of a formal succession cause.

"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."

10. The respondent applied for and was granted this specific instrument for the purpose of administering the estate according to the law until full representation is granted. The phrase administering the estate in this context must be understood functionally. In a fatal accident claim, the core administration required is to recover, preserve, and later distribute the damages awarded, a duty perfectly aligned with the temporary, purpose-specific nature of a grant ad litem. In **re Estate of Joseph Kimeto Kirwa (Deceased) (Ad Litem Succession Cause E030 of 2025) [2025]**, the court held that:

“That letters of grant ad litem be issued to the Applicant limited to the intent and purposes of prosecuting or defending any such suit which may be existing or to be initiated for the very purpose of preserving the interests and rights arising out of the estate properties which may be at risk of dissipation, wastage, unlawful transmission or conveyance before full grant of letters of grant of representation under Section 66 of the Act.”

11. On jurisdiction and discretion of the court, the learned trial magistrate correctly anchored his decision on Section 58, read with Section 66, of the Law of Succession Act. Section 66 grants the court discretion, listing children of the deceased as first in the order of priority for a grant of administration where there is no surviving

spouse. The Respondent, as an adult son and a dependant, squarely fell within this category.

**“66. When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference:
(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;”**

12. Furthermore, the magistrate rightly invoked the overriding objectives of the civil justice system as encapsulated in Sections 1A and 1B of the Civil Procedure Act. These provisions obligate courts to facilitate the just, expeditious, and proportionate resolution of disputes. To strike out a potentially meritorious claim on a technicality relating to the form of a grant, when the applicant is an obvious beneficiary with a legitimate interest, would be an affront to these principles. The court's

discretion in matters of procedure must be exercised to serve the ends of substantive justice.

“1A. Objective of Act

(1)The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.

(2)The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1)

(3)A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

1B. Duty of Court

For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims:

(a)the just determination of the proceedings;

(b)the efficient disposal of the business of the Court;

(c)the efficient use of the available judicial and administrative resources;

(d)the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.”

13. The appellant has not demonstrated that any other person with a superior or equal right under Section 66, such as another child has objected to the respondent's role. The record shows the other surviving children have raised no dispute. In the circumstances, the magistrates' court acted well within its statutory and inherent powers in issuing the grant to the Respondent.

14. The law is a tool for delivering justice. The technical objection raised seeks to elevate form over substance. The respondent is indisputably a son and dependant of the deceased. He holds a court order expressly authorizing him to act for the estate in legal proceedings. To nullify this suit would be to demand that the family, in their time of loss, must complete a full succession process before they can even begin to seek accountability for the death of their mother. This would cause undue delay, increase costs, and potentially prejudice a claim subject to limitation periods.

15. The grant ad litem serves as a legitimate placeholder, allowing the specific litigation to progress while the final administration of the

estate including the distribution of any eventual damages, can be settled in a full succession cause. This is a sensible and lawful procedure.

Conclusion

16. For the reasons set out above, I find no error in law or fact in the learned trial magistrate's ruling. The preliminary objection was rightly dismissed. The limited grant of letters of administration ad litem issued to Yassin Amukoya was properly granted and validly conferred upon him the legal capacity to institute Civil Suit No. 43 of 2022.

Orders

17. This appeal is hereby dismissed in its entirety.
18. The Ruling of Hon. Thomas Obutu (SPM) delivered on 23rd November 2023 is hereby affirmed and upheld.
19. The costs of this appeal are awarded to the respondent.
20. The lower court file is to be returned for the substantive suit to proceed to hearing without further delay.
21. Right of Appeal 30 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS
3RD DAY OF DECEMBER, 2025.**

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

In the absence of the parties nor advocates though aware of the ruling date the ruling be uploaded on CTS by Court Assistant forthwith.