



REPUBLIC OF KENYA



In re Estate of Beatrice Osare Simiyu (Deceased) (Succession Cause E235 of 2025) [2026] KEHC 1058 (KLR) (5 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1058 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E235 OF 2025
RN NYAKUNDI, J
FEBRUARY 5, 2026
IN THE MATTER OF THE ESTATE OF BEATRICE OSARE SIMIYU (DECEASED)
IN THE MATTER OF
DEBORAH DIANA SIMIYU APPLICANT**

RULING

1. Before this Court is a Petition for Letters of Administration *Ad Colligenda Bona* dated 5th December 2025. The Applicant moved this Court praying for a Grant of Letters of Administration *Ad Colligenda* of the estate of Beatrice Osare Simiyu who died domiciled in Kenya on the 18th June, 2025 which by law devolves and vests in her personal representatives but limited to the purpose only of accessing monies held at bank accounts at National Bank of Kenya Account Number 01245xxxxxxx (Nairobi Branch) and Account Number 01245xxxxxxx (Eldoret Branch), an M-pesa Account Under Number 0722xxxxxx, rental income from Eldoret Municipality Block 20 (kapyemit) 594, and all death gratuity payable to her estate under the *Pensions Act* (Cap. 189) Arising From Her Employment With KRA under the old pension scheme and doing such things as maybe necessary for the preservation of the same until further representation is granted.
2. The Applicant proceeded to state as follows;
 - a. The above-named Beatrice Osare Simiyu (Deceased), a Kenyan national and former employee of the Kenya Revenue Authority (KRA), died intestate on the 18th day of June 2025 at Bamburi Cement, domiciled in Kenya.
 - b. The Petitioner is the daughter of the Deceased and is desirous of obtaining a Limited Grant of Letters of Administration *Ad Colligenda Bona* in respect of the estate of the Deceased.
 - c. The Deceased left;
 - i. Bank accounts at National Bank of Kenya, Account Number 01245xxxxxxx (Nairobi Branch) and Account Number 01245xxxxxxx (Eldoret Branch);



- ii. An M-Pesa account under mobile number 0722xxxxxx;
 - iii. Ongoing rental income from Eldoret Municipality Block 20(Kapyemit)/594;
 - iv. All death gratuity payable to the estate under the *Pensions Act* (Cap. 189) arising from the Deceased's employment with KRA under the old pension scheme.
- d. The said assets are at risk of remaining inaccessible or being dissipated unless urgent steps are taken to collect and preserve the same, as more particularly set out in the Certificate of Urgency and Supporting Affidavit filed herewith.
 - e. The Deceased had extensive estate in Kenya beyond the assets listed in paragraph 3 above, and it is not cost-effective or practicable to obtain a full Grant of Letters of Administration at this time.
 - f. That special circumstances exist warranting the issuance of a Limited Grant *Ad Colligenda Bona*, namely the urgent need to access, collect, and preserve the Deceased's bank accounts, M-Pesa holdings, rental income, and any death gratuity payable to the estate in order to safeguard the estate assets pending full administration, settle outstanding medical bills incurred by the widower, and facilitate payment of school fees for the beneficiary Brazil Simiyu, thereby preventing undue hardship to the beneficiaries.
 - g. The Petitioner undertakes to faithfully collect and preserve the said assets according to law, limited solely to the purposes of collection and preservation, and to render a true and just account thereof whenever required by law to do so.
 - h. The Petitioner has no intention or power under this limited grant to distribute the estate or deal with the assets beyond preservation.
3. The Application is supported by an Affidavit sworn by one Deborah Diana Simiyu who deponed as follows;
- i. That the full names of the deceased whose estate the proceedings herein relate is Beatrice Osare Simiyu and I am the petitioner named in the petition herein dated the 17th December, 2025 upon which I have endorsed my name at the time of swearing this Affidavit.
 - ii. That I am the Petitioner herein and the daughter to the deceased herein.
 - iii. That the deceased died on the 18th June, 2025 at Bamburi Cement (Annexed and marked "DDSI" is a copy of the Certificate of Death). iv. That the deceased died intestate and left the following persons surviving her:

Name	Relation	Age
Deborah Diana Simiyu	Daughter	Adult
Protus Simiyu	Widower	Adult
Kevin Ondanje Simiyu	Son	Adult
Brazil Joseph Simiyu	Son	Adult

 (Annexed and marked DDS2 is the chief's letter
 - iv. That I urgently require the issuance of a Limited Grant of Letters of Administration *Ad Colligenda Bona* to enable me immediately access, collect, and preserve monies held in the Deceased's National Bank of Kenya Account Number 01245xxxxxxx (Nairobi Branch) and Account Number 01245xxxxxxx (Eldoret Branch); the M-Pesa account registered under mobile number 0722 629 099; rental income derived from Eldoret Municipality Block 20 (kapyemit)/594; and any death gratuity payable to her estate pursuant to the *Pensions Act* (Cap. 189) arising from her employment with the Kenya Revenue Authority under the old pension



scheme, for purposes of settling outstanding medical bills incurred by the widower and paying school

- v. Fees for the beneficiary Brazil Simiyu, pending full administration of the estate. (Annexed and marked DDS3 is the copy of the title deed to
- vi. Eldoret Municipality Block 20 (Kapyemit)/594 vi. That I believe to be veracious that it will be not cost effective to obtain full grant for purposes of accessing monies owing to the estate pending filing of the full grant.
- vii. That I have no power to distribute the estate of the deceased under the grant.
- viii. That the beneficiaries have all consented to my appointment as the administrator for the purpose of accessing and preserving monies held at bank accounts at National Bank of Kenya Account Number 01245xxxxxxx (Nairobi Branch) and Account Number 01245xxxxxxx (Eldoret Branch), an M-Pesa account under number 0722xxxxxx, rental income from Eldoret Municipality Block 20 (Kapyemit)/594, and any death gratuity payable to her estate under the Pensions Act (Cap. 189) arising from her employment with KRA under the old pension scheme
- ix. That what is stated herein is true and to the best of my knowledge save as to matters deponed to on information and belief the sources and grounds whereof have been specific and set out herein above.

Decision

4. In the normal procedural law on succession matters the petitioning for grant of representation which is in personum begins with Summons which includes filing the necessary mandatory forms for onward transmission to the Government Printer for gazettelement. This process is normally indispensable. However, in the wisdom of the drafters of the Law of Succession Act made provision for issuance of Special Grant of Letters of Administration in accordance with Section 54 and 67 of the Act. The Special Grant of Letters of Administration serve a particular purpose as defined in the codified Act itself.
5. In the instant Application the Summons so prayer for the Special Grant of Letters of Administration falls within the provision of Section 67 which provides as follows;

“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.”
6. The Court In re Estate of SMM (Deceased) [2021] eKLR stated as follows;

“The applicant seeks a special limited grant to enable her to access the deceased’s accounts at Equity Bank and Cooperative Bank “for purposes of payment of school fees and maintenance for the needs and welfare f the children of the deceased Although the applicant claims to be the wife of the deceased no marriage documents are produced. The Chief’s letter dated 12/8/2021 indicates that the applicant is one of the 2 wives of the deceased..... Certificates of all three named children of the applicant with the deceased are attached all indicating the deceased SMM as the father The court has considered that the interests of the children who were shown by certificates of birth to be children of deceased and who were said to be out of school for lack of school fees, require that a special grant be issued to their mother applicant for purposes for payment of school fees and school related expenses. In view of the special nature of the grant herein, the court will not insist



on the grant being made to two persons as in cases regular cases where minors' interests are involved.... In order to preserve the assets of the estate of the other beneficiaries, the access granted to the applicant shall be limited to one bank account and the amount presently required for the school fees and maintenance of the minors only.”

7. When the assets of an estate are endangered by delay in its administration the court has a general power to make a Limited Grant of Administration in order to preserve assets of the deceased within the jurisdiction without waiting until those entitled to a grant have applied. These Grants are particularly useful when a person entitled to full grant is abroad or is temporarily incapacitated and where some urgent step needs to be undertaken. For example, in order to keep the deceased person's business running or any other urgent purpose. These Special Grants are also commonly allowed where there is a need for urgent administration but where the full facts or details to allow a full grant to be issued cannot be immediately ascertained.
8. The instant Application raises compelling evidence for this court to exercise discretion to issue Special Grant of Letters of Administration under Section 67 of the [Act](#) so as to secure preservation and collection of the assets of the deceased but more importantly to secure the right to life under Article 26 of the [Constitution](#) of the widower who is said to be ailing. The right to health as a fundamental human right particularly under Article 43 of the [Constitution](#) and International Law as stipulated in Article 2(5) and 6 of the same constitution often emphasize the highest attainable standard of health including emergency care and reproductive health services. The right to health and medical aid to protect the health of one of the beneficiaries to the estate is a fundamental right under Article 43 of the [Constitution](#).
9. There is also compelling evidence under the doctrine of necessity requiring one of the beneficiaries namely Brazil Joseph Simiyu who is currently undertaking undergraduate studies in the USA. This is the duty which the deceased during her lifetime was undertaking before her demise. This is in consonance with Article 53 of the [Constitution](#) as read with Article 26.
10. For those reasons there is merit to exercise discretion in terms of Section 67 of the [Law of Succession Act](#) as read with Rule 73(1) of the [Probate and Administration Rules](#) to issue this Special Grant of Letters of Administration *Ad Colligenda Bona* to fulfill the following objectives;
 - a. That the Applicant to proceed to collect and preserve the assets of the deceased estate pending the Petition for a full grant.
 - b. That the Applicant in doing so shall bear in mind that this special grant it is not for the distribution of the estate to the beneficiaries.
 - c. That under the doctrine of necessity leave be and is hereby granted to permit withdrawal of a sum of Ksh. 1,864,000/= to meet the health rights of the widower Protus Simiyu who is currently under the health care management at Nairobi West Hospital. It is trite that every beneficiary to an estate is entitled to an essential healthcare benefit to be charged on account of the estate of the deceased.
 - d. That in making this decision cash withdrawals from the account of the estate I bear in mind that the right to health is a fundamental human right guaranteed in the [Constitution](#) of Kenya Article 43(1) of the [Constitution](#).
 - e. That the Applicant shall ensure that she has complied with the protocols provided for under the [Succession Act](#) to petition for full Grant of Letters of Administration within 60 days from today's date



11. Orders accordingly.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 5TH DAY FEBRUARY, 2026.

.....

R. NYAKUNDI

JUDGE

M/s Ojalla Odawo & Co. Advocates

