

**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**P & A NO. E079 OF 2024**  
**IN THE MATTER OF THE ESTATE OF TOWEY GEORGE GUDLER**

ISABELLLA NJERI TOWEY .....APPLICANT

VERSUS

ANN CHEBET TOWEY .....1<sup>ST</sup>

RESPONDENT

JOHNSTONE KIPYATOR .....2<sup>ND</sup>

RESPONDENT

PAULINE MWIKALI KIELEKO .....3<sup>RD</sup> RESPONDENT

**RULING**

1. This matter relates to the estate of the late **George Gudler Towey** who died intestate on 20<sup>th</sup> January 2024. Grant of Letters of Administration *ad litem* were issued to **Anne Chebet Towey** and **Johnstone Kipyator** in their capacity as daughter and son of the deceased. On 17<sup>th</sup> October 2024 and amended on 17<sup>th</sup> December 2024. Summons for Revocation and Annulment of the said Grant dated 28<sup>th</sup> November 2024 was file by the Applicant.
2. Subsequently, a Summons for rectification of Grant dated 29<sup>th</sup> May 2025 was filed by the 3<sup>rd</sup> Respondent in which she sought that the Grant *ad litem* issued on 17<sup>th</sup> December 2024 be further rectified as provided under **Rule 43(1) of the Probate and Administration Rules** to include her as a co-

administrator of the deceased estate by dint of the fact that she was the deceased wife.

3. The court after listening to the representations made by Counsel for the parties directed that the Summons seeking for the Revocation and Annulment of the Grant be heard first. This Ruling therefore is with respect to the Summons seeking for the Revocation and Annulment of the Grant. The same is dated 28<sup>th</sup> November 2024. The said Applicants seeks the following orders;

- 1) **That the Grant of Letters of Administration issued to Anne Chebet Towey and Johnstone Kipyator on 17/10/2024 be revoked or annulled.**

- 2) **That costs of this application be provided for.**

4. The Application is filed through **Messrs Ngatia & Associates Advocates** and is expressed to be brought under **Section 76 of the Law of Succession Act and Rule 44 and 73 of the Probate and Administration Rules**. It is premised on the grounds set out thereon and the contents of the Supporting Affidavit sworn by the Applicant.

5. She deposed that she is the wife of the deceased, that the deceased died on 20/01/2024, domiciled in Kenya and that the parties herein are involved in proceedings that were instituted on 24/4/2024 in **Nairobi High Court P & A No. E305 of 2024, In the Estate of George Gudler Towey** wherein she seeking Letters of Administration in respect her deceased husband and that

the 1<sup>st</sup> and 2<sup>nd</sup> Respondent have also filed a Cross-Petition seeking Letters of Administration in respect to the same estate. According to the Applicant, it is fraudulent and deceitful for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent to clandestinely file the proceedings herein without disclosure of the earlier proceedings.

6. She further deposed that she also filed a Cross-Petition for Letters of Administration Intestate in **Nairobi High Court P &A No. E305 of 2024, In the Estate of George Gudler Towey**, by virtue of being a wife to the deceased. She contended that pending the determination of the Succession Cause in Nairobi, the Respondents herein lodged a separate claim being **Eldoret High Court P & A No. E079 of 2024** and were issued with a Limited Grant of Administration on 17/10/2024. She maintained that the above Grant was obtained fraudulently by concealing that there was another matter pending in Nairobi with regard to the deceased's estate.
7. She deposed that she was not served with the petition for Grant of limited Letters of Administration and was not aware that the present suit had been filed. She thus urged the Court to revoke the Letters of Administration issued to the Respondents.

### **1<sup>st</sup> and 2<sup>nd</sup> Respondent's Replying Affidavit**

8. The Application is opposed by the 1<sup>st</sup> Respondent vide his Replying Affidavit dated 25/4/2025. The 1<sup>st</sup> Respondent deposed that she is a biological child of the late George Gudler Towey (deceased) born on 6/10/1998 and given the name Anne Chebet Towey and later changed the same to Arthur Kibet Towey after relocating to the United Kingdom, that

she born of the deceased and my mother Ms. Jane Ndetto, that upon her birth she lived with both parents in South B, Nairobi County until sometime in the month of October 2010 when her parents separated and she and her father relocated to Karen, Nairobi County pursuant to a custody order.

9. She further deposed that she met Isabella Njeri sometimes in the year 2012 who was introduced to her by her late father as his dormant business associate and that Isabella Njeri would occasionally visit their Karen home and her late father's office with her son, one Brian Wachira as would many of her late father's other business associates. She maintained that the said Isabella Njeri was never married to her late father but had a child by the name Brian Wachira, from a relationship that had nothing to do with her late father and that because of the marriage to Brian Wachira's father, Isabella Njeri had no capacity to marry her late father and is therefore not a wife. She stated that her father had other children namely: Johnstone Kipyator and Bianca Ndanu.

10. That in the year 2013, she sought internship at Safaricom Limited in Nairobi within Accounts Section where she met the 1<sup>st</sup> Defendant who was the head of the Section that she was attached to, that she was impressed by the 1<sup>st</sup> Defendant's commitment to work, professionalism, work ethic and the all-round commitment in mentorship, that their relationship transitioned from being exclusively professional to friendship to the extent that she humbly requested her to meet her late father which request was graciously accepted, that her late father requested the 1<sup>st</sup> Defendant to continue mentoring her during her internship and generally guide her at the workplace and beyond, that she is aware that in the year 2015, her father's businesses started

experiencing cash flow challenges that were compounded by the collapse of Chase Bank that had his personal and business accounts, that upon placement of Chase Bank under statutory management, most of her late father's businesses collapsed under the weight of debt and theft from staff, that as a result of the collapse of his businesses, most of her father's business associates and friends, including Isabella Njeri, deserted him, that she has not heard from or of the Applicant ever since, until after her father's demise that thereafter, her father led a very lonely and desolate life, generally keeping to himself primarily because of betrayal by business associates, that in an attempt to meet the various competing financial needs, her father rented out their Karen home and moved to his Nyahururu farm where he began operating from.

**11.**that she experienced financial challenges because of the intermittent financial support that my late father extended to me since the year 2016, which included late payment of her rent and general upkeep in the United Kingdom where she was studying at the time and that in further efforts to meet his financial obligations, she is aware that her late father turned to friends and more particularly, to Pauline Mwikali Kieleko for regular support especially towards her upkeep and welfare while in the United Kingdom at the University.

**12.**She averred that sometimes in 2018 her father's business associate, the Applicant herein, frustrated him by refusing to consent to a withdrawal of USD \$85,000 invested in Friends Provident International in Dubai, in the United Arab Emirates and he was devastated by the frustration and betrayal by the Applicant as he did not have money to sustain her in the United

Kingdom. She reiterated that no marriage ever took place between my late father and the Applicant in 2010 or indeed any other time as of the time she was living with my father at our Karen home as she was privy to most of his dealings and movements.

**13.** She stated that she also had occasion to look at a statutory declaration dated 11/10/2018 signed by her late father under oath to the effect that he was not married at the time and she confirms that is the true position since she had not met anyone holding out as her father's wife. She further stated that she is aware that my father moved from his Nyahururu residence into Pauline Mwikali Kieleko's house in the year 2019 when they started cohabiting, that her father later looked for a bigger house in Kileleshwa where during her trips back in the country, she would visit and stay with him and Pauline Mwikali Kieleko with whom he had started cohabiting as husband and wife, that to date, even after her father's demise, she has maintained a close filial relationship with Pauline Mwikali Kieleko whom she is in constant communication with, that she is aware that her father continued cohabiting with Pauline Mwikali Kieleko culminating in celebration of their marriage under Kamba customary traditions on 11/09/2020 and that the two got married on 6/04/2021 at the Nairobi Marriage Registry and were issued with a Marriage Certificate, a ceremony that she was aware of albeit while away since she was in constant communication with both of them, that it was Pauline Mwikali Kieleko who kept her apprised of her late father's illness and hospitalization and subsequently was the first to break the sad news of his demise to her and not the Applicant,

14. That sometime after her father's demise, she was surprised to learn of the Applicant's claim of her purported marriage to her late father yet she had not heard or seen her for almost 12 years save for her refusal to release USD \$85,000 required for use by her late father to pay my school fees and sustenance and that during her late father's long illness it was Pauline Mwikali Kieleko who nursed him in and outside hospital between November 2023 and 20 January 2024, while at all times keeping her apprised of his progress and that all this while, neither the Applicant nor indeed any other business associate got involved and that they conveniently turned up after his demise.

15. She urged that their petition for grant *ad litem* was prompted by the pending suits in their deceased's father's name as it was necessary for him to be substituted so as to protect the interests of the estate, that the suits pending in Court include; **Milimani Criminal case No. 721 of 2018, Republic vs Mohammed Khan and 3 Others; Nairobi and Land Court Case No. E 127 of 2024, Isabella Njeri vs Pauline Mwikali Kieleko; Milimani HCCC No. 339 of 2018, George Towey vs Chase Bank and 3 Others and HC Criminal Revision No. E083 of 2022, George Guilder Towey and Another Vs Mohammed Zafrula Khan & 4 others**, that **Milimani Criminal case No. 721 of 2018, Republic vs Mohammed Khan and 3 Others** was coming up for hearing of the main suit on 30/07/2024 whereas our deceased father had not been substituted, that it was imperative to obtain the *ad litem* to enable substitution of their deceased father and to ensure that the pending suits did not proceed without the deceased's estate input, that the grant obtained is limited to instituting, prosecuting, and defending the estate in Court proceedings without power of distribution grant and is normally

issued due to the exigencies arising in relation to the estate and which could not wait for issuance of full grant through the ordinarily long succession proceedings.

16. That the Applicant's apprehension is therefore unwarranted since the grant *ad litem* does not confer powers to distribute the estate, that the succession proceedings in Nairobi HCFP&A E305 of 2024 seeks grant of letters of administration intestate, which will be used to collect, preserve or to distribute the estate of the deceased, that the two grants are distinct and are issued for separate purposes. Consequently, the filing of a petition for grant *ad litem* in the Eldoret High Court is not tantamount to filing another Petition for full Grant at Milimani High Court and that they are not obligated to inform the Applicant of the petition for *ad litem* as she is not a spouse to their deceased father.

### **3<sup>rd</sup> Respondent's Replying Affidavit**

17. The Application is also opposed by the 3<sup>rd</sup> Respondent vide her Replying Affidavit sworn on 9/06/2025. She deposed that she is the widow of the deceased having been married on 6/4/2021. She further deposed that she is fully aware that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, being children of the deceased, petitioned this Court for Special limited Grant *ad litem* for limited purposes of joining pending suits for the estate of George Gudler Towey. She stated that this suits include **Nairobi Environment and Land Court Case No. E 127 of 2024, Isabella Njeri vs Pauline Mwikali Kieleko and 3 Others, Milimani HCCC No. 339 of 2018, George Towey and 3 Others vs Chase Bank and 5 Others, Milimani Criminal case No. 721 of 2018, Republic vs Mohammed Khan and 3 Others and HC Criminal Revision No. E083**

**of 2022, George Guilder Towey and Another Vs Mohammed Zafrula Khan & 4 others.**

18. She further deposed that pursuant to the petition, a grant of letters of *Administration ad litem* was made to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein by this Honorable Court on the 7/10/2024 and rectified on 7/12/2024, that a limited grant of letters of administration *Ad Litem* is a special limited grant, limited only to the institution of a suit and/or joining to defend or sustain a progressing suit in Court, that at no juncture, does a limited grant of letters of administration *Ad Litem* amount to the management and distribution of a deceased's estate, that a special limited grant of letters of administration *Ad Litem* are in no manner inhibitory to the proceedings for a grant of letters of administration intestate and can therefore be pursued concurrently.

19. That it then does not make any logical sense, to seek for the revocation and/or annulment of a special limited grant on the basis and grounds that there is pending succession proceedings, that it is fully within my knowledge, and as is evident from the list of cases provided here above, that one of the cases is by the Applicant herein, to wit: **Nairobi Environment and Land Court Case No. E127 of 2024: Isabella Njeri vs Pauline Mwikali Kieleko and 3 others** and that being a party in the above ELC case, she is aware that pursuant to the *ad litem* grant issued herein, the 1<sup>st</sup> Respondent herein, Anne Chebet Towey attained the requisite locus standi to defend the said suit against the Applicant herein and that it makes absolutely no sense therefore, for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to be required to seek and obtain the Applicant's consent, to join the proceedings for the

estate of the deceased, in the same case where she is the Plaintiff of the suit and where the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are defendants.

**20.** She asserted that equally, the Applicant herein has taken no action nor shown any intention or interest in prosecuting or defending the other three pending suits filed by or against the deceased, that she is apprehensive that without any representation, adverse decisions are bound to be made against the deceased's estate in the pending suits, that it is then imperative that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be allowed and permitted to continue with representation in the said suits on behalf of the deceased, noting that no other person, not even the applicant herein, has sought to protect the interests of the deceased's estate in the said suits.

**21.** She contended that without the special limited grant *Ad Litem*, then the 1<sup>st</sup> and 2<sup>nd</sup> Respondents will be stripped off the locus standi to institute and defend any suit in protection of the deceased's estate, which failure is tantamount to derogation, wastage and adverse decisions against the deceased's estate, that the revocation and/or annulment of the issued grant of letters of administration *Ad Litem* will be tantamount to a denial, withdrawal and stripping of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' rights to seek legal redress and remedies against the Applicant who has committed herself to the wastage and intermeddling of the deceased's estate.

**22.** She further deposed that she is fully aware and well informed that all due process was followed in obtaining the special limited grants, where everything was done and conducted openly devoid of any misrepresentation, fraud or non-disclosure of material facts. She confirmed that she was made

aware of the said petition for grant hence there was no secrecy as alleged by the Applicant and as such, the grant in issue was obtained legally.

23. She urged that therefore the summons herein fails to meet the threshold for revocation and/or annulment as set out in section 76 of the law of succession Act and rules 44 and 73 of the Probate Administration Rules. She added that it is then only just and fair that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents be allowed to pursue and protect their interests and rights in their late- father's estate as well as to preserve the deceased's estate through participation in the ongoing suits pending the issuance of grant of letters of administration intestate.

#### **Further Affidavit**

24. The Applicant filed a Further Affidavit dated 13/05/2025. In the Affidavit she stated that she lawfully married the deceased in the year 2010 through a church wedding which the 1<sup>st</sup> Respondent attended, that she has resided in the Karen Home with their son Brian Wachira Towey since 2010 and continue to reside thereon to date contrary to the 1<sup>st</sup> Respondent's assertions and that the 1<sup>st</sup> Respondent lived with them in the Karen Home from the year 2010 to 2015 when she relocated to the United Kingdom. She stated that she is not a merely dormant business partner to the deceased but a substantive shareholder in Netsol Kenya Limited.

25. She further deposed that the only child of the deceased who she was introduced to is the 1<sup>st</sup> Respondent and that she has no knowledge whatsoever of the other persons referred to therein as children of the deceased. She stated that in **ELC Case No. 127 of 2024**, one Pauline Mwikali Kieleko affirmed that she and the deceased resided at a property in

Kileleshwa, that the Friends Provident International Policy referred to is a joint life insurance policy taken by herself and the deceased on 28/10/2010 and not an investment as claimed. She added that the said policy was personal to the deceased and herself and does not concern the 1<sup>st</sup> Respondent or any other person and that proceeds of such policy are not part of the deceased's estate and therefore fall outside the ambit of succession proceedings.

26. That the Statutory Declaration dated 11/10/2018 was relied upon in the purported sale of the Karen Home, a transaction which is currently under legal challenge in **ELC Case No. 127 of 2014**. She contended that the Respondents have not provided any justification as to why the present cause was filed in Eldoret particularly given that the other matters are pending before Milimani Law Courts in Nairobi. She contended that it is evident that the 1<sup>st</sup> Respondent has admitted to having concealed material facts from this Court at the point of lodging the application for grant of Letters of Administration.

### **Submissions**

27. The application as directed by the court was canvassed vide written submissions. The Applicant's submissions dated 26<sup>th</sup> June 2025 were filed by her Counsel Ngatia Associates. The said Counsel also filed a Rejoinder to the submissions filed on behalf of the 3<sup>rd</sup> Defendant dated 8<sup>th</sup> August 2025. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent's submissions dated 19<sup>th</sup> August 2025 were filed by Musyoka Murambi & Associates whereas the 3<sup>rd</sup> Respondents submissions dated 29<sup>th</sup> July 2025 were filed by Mutuma Gichuru & Associates.

28. I have considered the objection by Counsel Mr. Ngatia in his rejoinder that because the 3<sup>rd</sup> Respondent submissions were filed out of the time lines given by the court, they should be struck out. However, in light of the provisions of **Article 159(2)(d) of the Constitution** as read together with **Section 1A and 1B of the Civil Procedure Act** which both enjoin court to determine every case before it without undue regard to technicalities, in the interest on the substantive justice of this case, this court shall deem the submission on behalf of the 3<sup>rd</sup> Respondent to be properly filed.

#### **Applicant's Submissions**

29. Counsel for the Applicant began by restating the party's pleadings. Regarding the issue of revocation of Grant, Counsel cited **Section 76 of the Law of Succession Act** and the following cases: **In Re The Estate of Elizabeth Alex (Deceased) [2009] KEHC 35 (KLR)**, **In re Estate of Julius Ndubi Javan (Deceased) [2018] KEHC 8523 (KLR)**, **In re Estate of Alphonse Liyayi (Deceased) [2024] KEHC 6889 (KLR)**, **In re Estate of Patrick Wahome Kamangu (Deceased) (Succession Cause E333 of 2021) [2024] KEHC 3728 (KLR)** and the case of **Josephat Shikanga Heyi v Pamela Undisa & another [2015] KEHC 1049 (KLR)**.

30. Counsel urged that in light of the fraudulent conduct demonstrated by the Respondents, this Court should refrain from endorsing or legitimizing such deceptive and unlawful conduct.

#### **1<sup>st</sup> and 2<sup>nd</sup> Respondent's Submissions**

31. On his part, Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent basically reiterated the averments in the 1<sup>st</sup> Respondent's replying Affidavit and thus I find no reason to reproduce the same. On revocation of Grant, Counsel cited Section 76 of the Law of Succession Act and cited the case **Jamleck Maina Njoroge v Mary Wanjiru Mwangi [2015] KEHC 7143 (KLR)**, on revocation of Grants.

32. Regarding special limited grants of representation, Counsel cited the case of **Karega & 2 others v Kiama & 2 others (Succession Cause 6 of 2019) [2022] KEHC 9880 (KLR)** and argued that there is no Grant of Letters of Administration Intestate that has already been issued in respect of the estate of the deceased. Counsel urged that this Court should therefore not proceed to revoke and or annul the Grant *ad litem* obtained on 17/10/2024 and further rectified on 17/10/2024. Counsel further urged that revocation of the same would subject the estate of the deceased to great prejudice given the pending matters in the name of the deceased.

33. On concealment and or suppression of material facts, Counsel maintained the issuance of the Grant *ad litem* was never procured by concealment of facts as there was nothing material to be disclosed to the Applicant. Counsel argued that the Applicant has never been a spouse to the deceased and therefore cannot allege concealment and or suppression of material facts relating to the deceased's estate.

34. Regarding costs of this application, Counsel submitted that costs follow the event as per the strict requirements **of Section 27 of the Civil Procedure**

**Act.** Counsel urged that the Applicant should therefore bear the costs of this application.

### **The 3<sup>rd</sup> Respondent Submissions**

**35.** Counsel for the 3<sup>rd</sup> Respondent begun by noting that a limited grant *ad litem* is in nature a special Grant provided for under Section 54 and the 5<sup>th</sup> Schedule under paragraph 14 of the Law of Succession Act, limited only to the instituting, prosecuting and defending the estate in Court proceedings without any power of distribution of the estate. He cited the case of **In re Estate of Henry Kithia Mwitari (Deceased) [2021] KEHC 13569 (KLR)** and the case of **In re Estate of the Late Toto Ngonyo Hinzano (Deceased) (Ad Litem 31 of 2021) [2024] KEHC 5639 (KLR).**

**36.** Counsel added that whereas a limited grant *ad litem* is a special limited grant, limited only to instituting, prosecuting and defending the estate in Court proceedings without any power of distribution of the estate, a full grant in this case being the Grant of Letters of Administration Intestate, is issued for purposes of administering and distributing the estate. Counsel submitted that, as such the two grants are distinctively different and having different powers and functions.

**37.** As to whether the two grants can run concurrently, Counsel submitted that yes the two grants can run concurrently for the very simple reasons that the two are different in nature, scope and purpose. He cited Wananda J.R. Anuro J in the case of **In re Estate of the Late Mary Tamurei Kanaptany (Succession Cause 17 of 2023) [2024] KEHC 4528 (KLR).** Counsel maintained that the ground and argument advanced by the applicant on the

pendency of **Succession Cause No. 305 of 2024 In the Estate of George Gudler Towey** is immaterial and insignificant as a ground for revocation of the special limited grant *ad litem*.

38.Regarding the process of obtaining Grant *ad litem* and the grounds for revocation of a limited grant *ad litem*, Counsel cited **Richard Mwongo J** in the case of **Macharia v Githendu (Probate &Administration E0015 of 2021) [2022] KEHC 13859 (KLR) and D.K. Kemei J** in the case of **Winrose Emmah Ndinda Kiamba v Agnes Nthambi Kasyoka [2021] eKLR**. Counsel submitted that from the decision of D.K. Kemei J, it is evident that a limited grant, in this case being a limited grant *ad litem*, may not be subjected to full and strict compliance with the requirements meant for a full grant of representation.

39.Counsel added that this is noting that it is issued due to the exigencies arising in relation to the estate and which could not wait for issuance of full grant through the normal way and is also issued without prejudice to the right of any other person to apply for full grant of representation to the deceased. Counsel noted that it is on the same light that section 76 of the Law of Succession Act is not to be invoked whimsically in applications for revocation or annulment of special limited grants.

40.On the issue of revocation of grant, Counsel cited the case of in **re Estate of Magangi Obuki (Deceased) [2020] eKLR**, where the Court observed that the power to revoke a grant is a discretionary power that must be exercised judiciously and only on sound grounds. Counsel thus submitted that 1<sup>st</sup> and 2<sup>nd</sup> Respondents are children of the late George Gudler Towey

(deceased) and therefore entitled to the administration of the deceased's estate, and this, has not been put to question. Counsel argued that the process of obtaining the special limited grant in issue before this Honorable Court, met and satisfied all the conditions and procedural requirements as under section 54 and the 5<sup>th</sup> schedule of the Law of Succession Act and was made in the set-out formats under the First Schedule of the Law of Succession Act, therein following due process of the law, hence legal. Counsel cited **Richard Mwongo J in the case of Macharia v Githendu (Probate & Administration E0015 of 2021) [2022] KEHC 13859 (KLR)**.

41. Counsel further submitted that the Applicant has approached this Honorable Court seeking for revocation of the special limited grant *ad litem* issued on 17/10/2024 and rectified on 17/12/2024 on the grounds that: i. The proceedings to obtain the grant are defective and fraudulent; ii. There is a pending and ongoing succession cause for grant of letters of administration intestate; iii. The Applicant was not served and/or involved in the process leading to issuance of the grant herein; and iv. The grant was obtained fraudulently by the making of a false statement or by the concealment of material facts from the Court. Counsel argued that grounds (i) and (iv) have not been substantiated by the Applicant as to satisfy being grounds for revocation of grant and that no specifics of the defects and fraudulence of the procedure have been provided and that equally that the Applicant has not specified the alleged false statement made or the material facts not disclosed to the Court, and as such these grounds as advanced are but mere assertions without any substantial weight.

42. Counsel maintained that the instant proceedings are in every manner and every way different and distinguishable from the proceedings in Nairobi HCFPA/E305/2024. The instant proceedings are for grant of a special limited grant *ad litem* which is by nature a finite grant that becomes obsolete upon serving its purposes and as such the ground by the Applicant that there exists a succession cause in Nairobi over the same estate hence the instant suit cannot proceed, is misguided and untenable.

43. Counsel posited that Wananda J.R. Anuro J **In re Estate of the Late Mary Tamurei Kanaptany (Succession Cause 17 of 2023) [2024] KEHC 4528 (KLR)(Supra)** noted the difference and uniqueness of a special limited grant proceedings and succession proceedings. Counsel argued that each case must be dealt with and determined on the basis of its own unique facts and circumstances. Counsel submitted that therefore, the existence of succession cause **Nairobi HCFPA/E305/2024** does not invalidate the instant proceedings being for a special limited grant *ad litem* hence ground (ii) fails.

44. Regarding the failure to involve the Applicant in the process leading to the issuance of the grant herein, Counsel cited Hon. D.K. Kemei J in the case of **Winrose Emmah Ndinda Kiamba v Agnes Nthambi Kasyoka [2021] eKLR (Supra)** who observed that a limited grant *ad litem*, need not be subjected to full and strict compliance with the requirements meant for a full grant of representation, as it is issued due to the exigencies arising in relation to the estate and which could not wait for issuance of full grant through the normal way and is also issued without prejudice to the right of any other person to apply for full grant of representation to the deceased.

45. Counsel further submitted that the Applicant is party to some one of suits being **Nairobi ELC Case No. E127 of 2024: Isabella Njeri vs Pauline Mwikali Kieleko & 3 others** (which she brought in her personal capacity and not as a legal representative of the deceased Estate): In that suit, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein are defendants in their capacity as Legal representatives of the deceased Estate pursuant to the *ad litem* grant herein.

46. According to Counsel, it then makes absolutely no sense and in fact it would bring about an absurdity for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to seek and obtain the Applicant's consent to join the proceedings as defendants on behalf of the deceased's estate, in the same case where the Applicant herein is the Plaintiff. Counsel argued that the Applicant has not shown any interest nor taken any action towards prosecuting and defending any of the other 3 pending suits on behalf of the estate of the deceased. Counsel maintained that it is wholly unjust for the Applicant to now assert and posture as a victim that she was excluded from the process, given her demonstrated disinterest in securing the special *ad litem* grant required to represent the deceased's estate in the pending suits.

47. Counsel thus urged the Court to consider that revoking the *ad litem* grant would strip the Respondents of locus standi in the pending suits. This would result in the suits proceeding undefended or without prosecution to the obvious detriment of the deceased's Estate. Counsel reiterated that in obtaining the special limited grant *ad litem* herein, the Respondents followed due process and applied for the grant legally and that there was no fraud, misrepresentation or any false statements made to this Honorable Court. Counsel maintained that the Applicant has failed to demonstrate how the

grant was obtained fraudulently as to occasion and compel this Honourable Court to revoke and/or annul the grant herein

48. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents also filed Supplementary Submissions dated 1/09/2025. The 3<sup>rd</sup> Respondent also filed Supplementary Submissions dated 8/08/2025.

### **Determination**

49. I have considered the pleadings by the parties as well as the submissions filed by the respective Counsel on their behalf. I have addressed my mind at length to the depositions made in the respective affidavits of the Respondents. Even though from the Application as filed the reasons for which the Applicant herein is seeking for the revocation and annulment of the grant *ad litem* herein issued as laid out in ground 3) of the Grounds in support of the Application and at paragraph 4) of the Affidavit of the Applicant is a bit confused, the import of her application, which is common ground amongst the parties, is that on 24<sup>th</sup> April 2024, in **Nairobi HCFP&A E305 of 2024, In the Estate of George Gudler Towey**, Anne Chebet Towey and Pauline Mwikali Kieleko are seeking that they be granted Letters of Administration in respect to the estate of the deceased herein. That in the said **Nairobi HCFP&A Cause No. E305 of 2024**, she has have also filed a **Cross-Petition** seeking Letters of Administration of the same estate on the ground that the deceased was her husband.

50. That the existence of this cause notwithstanding, and without the knowledge of the Applicant, the Respondents proceeded and obtained the Grant *ad litem* in the cause before this court clandestinely without disclosing the existence

of **Nairobi HCFP&A Cause No. E305 of 2024**. That this act by the Respondents was fraudulent and deceitful and for want of disclosure.

51. From my perusal of the Replying Affidavit of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents I note that it is almost exclusively premised on their position and assertion that the Applicant herein was not a wife to the deceased. That in this regard, they were under no obligation to inform her of the filing of the cause before this court. I also note from my perusal of the 3<sup>rd</sup> Respondent's Affidavit that it is also along the same lines and with the assertion that she is the legal wife of the deceased having entered into a customary marriage with him in the year 2021.

52. With regard to the submissions, I note that the same on behalf of the Applicant are premised on the provisions of **Section 76 of the Succession Act**. On the other hand, those of the Respondents in a nutshell, are largely premised on the assertion that there is no bar to a party petitioning for Grant *ad litem* even where there exists a substantive petition for a full Grant because the two are not similar. That further, it is not a requirement that the petition for Grant *ad litem* be served upon the other party.

53. From my consideration of these pleadings and submissions as herein summarized, it is my considered opinion that the only issue for determination is;

**“Whether the Grant *ad litem* issued to Anne Chebet Towey and Johnstone Kipyator on 17<sup>th</sup> October 2024 and rectified on 17<sup>th</sup>**

**December 2024 was obtained by the concealment of material facts.**

**54. Section 76 of the Law of Succession Act provides for the circumstances under which a grant can be revoked and/or annulled as follows:**

**Revocation or annulment of grant**

**A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the Court decides, either on application by any Interested Party or of its own motion—**

**(a) that the proceedings to obtain the grant were defective in substance;**

**(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the Court of something material to the case;**

**(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;**

**(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—**

**(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the Court order or allow; or**

**(ii) to proceed diligently with the administration of the estate; or**

**(iii) to produce to the Court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or**

**(e) that the grant has become useless and inoperative through subsequent circumstances.”**

55. These provisions were restated and expounded upon by **Hon. Justice W. Musyoka** in the case of **Re Estate of Prisca Ong’ayo Nande (Deceased) [2020] eKLR** which decision this court associates with fully. As is apparent from the said Provisions of **Section 76 of the Act**, there are a total of eight instances as itemized in sub sections a) to e) upon which the revocation of a grant ought to be premised. The Applicant herein has invited this Court to revoke the Grant of Letters of Administration made to the Petitioner on the allegation that the Petitioners concealment from the Court of the fact of the existence of the material facts the fact of the existence of **Nairobi HCFP&A**

**Cause No. E305 of 2024** which the Applicant considers to be a material fact.

56. The law regarding Special Forms of Grants, and in this case, Grants of Letters of Administration limited to the filing of suits, that is, grants *ad litem*, is provided for in the **Fifth Schedule at paragraph 14 of the Law of Succession Act** which provides as follows:

**“When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.”**

57. The conditions for this type of special grant are: first, that there must be an existing suit; second, that there is a deceased person who ought to be a party to the suit; third, that the suit requires the involvement of a representative of a deceased person; fourth, that the person entitled to administration of the deceased’s estate is unable or unwilling to do so; fifth, that there is a party desirous of proceeding with the suit by applying to nominate a suitable person to act on behalf of the deceased’s estate and sixth, that the nominee is

capable of being appointed to act for the deceased through a limited grant for that purpose by way of limited grant.

**58. In re the estate of Helena Wangechi Njoroge (Deceased) [2015] KEHC 2046 (KLR)** the Court referring to a Grant *ad litem* held that:-

**“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 him 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.”**

**59.** This court does in fact note and is very much alive to the distinction between a Grant *ad litem* and a full grant as herein summarized and as submitted upon at great length by both Counsel for the Respondent. Suffice it to say that everything remaining equal, I am persuaded that the fact of the subsistence of a Petition for a full grant is not a bar to and does not then invalidate a petition for Grant *ad litem* for the purposes of filing a civil suit to protect or defend the estate of a deceased person against third parties. However, the court in reaching its determination is enjoined to consider each case in its own peculiar circumstances.

60. In the instant case, the court needs to consider the circumstances pertaining to the filing of the petition for the Grant *ad litem* herein, so as to determine whether the same was made in circumstances that were sufficiently straight forward and bona fides to warrant the application of the position that a Petition for Grant *ad litem* can be considered and a grant issued even where a Petition for a full Grant is subsisting, or whether those circumstances warrant a deeper consideration by the court in reaching its determination. I need to mention here that the court will not saddle itself with the issue of whether or not the Applicant herein is a wife to the deceased, which argument was the prominent and dominant response by the Respondents, for reasons that in my considered opinion, this is an issue that falls within the purview and jurisdiction of **Nairobi HCFP&A Cause No. E305 of 2024**

61. From the pleadings in the Petition for the Grant *ad litem* that was filed before this court, this court noted that the fact that there exists **Nairobi HCFP&A Cause No. E305 of 2024** wherein the Respondents are the Petitioner and the Applicant herein has filed a cross petition against their Petition and further, that the said cause is alive, subsisting and pending as between the parties in that cause, was not disclosed. Further, this allegation of non-disclosure as made against the Respondents by the Applicant was not at all denied by the Respondents in their pleadings and even submissions. The Respondents in their Petition before this court only listed the following cases as the ones that they were seeking the Grant *ad litem* to enable them defend on behalf of the Estate of the deceased herein;

- i) Nairobi ELC Case No. E127 of 2024 - Isabella v Pauline Mwikali Kieleko & 3 Others

- ii) Milimani HCCC No. 339 of 2018 – George Towey & 3 Others v Chase bank Limited & 5 Others
- iii) Milimani CRC Case No. 721 of 2018 – Republic v Mohammed Khan & 3 Others
- iv) HCCRREV No. E083 of 2022 – George Gudler Towey & Another v Mohammed Zafrula Khan & Others.

**62.** Over and above this observation, upon my perusal of the said Petition filed in Nairobi between the parties, the court noted that the Respondents themselves have annexed thereto a Certificate of Death indicating that the deceased died at the AAR Hospital in Nairobi County. Further, in her Affidavit in support of the Cross Appeal, the Applicant has stated that the deceased was domiciled in Karen in Nairobi. It is therefore strange and indeed suspicious that with these averments made in these Petition by both parties, coupled with the fact that the Respondents themselves filed the main Petition in Nairobi, then chose to file the Petition for the Grant *ad litem* in Eldoret.

**63.** Further, both parties have listed the total number of the deceased assets as fifteen. Out of these, ten comprise of land of which only three are in Uasin Gishu County. The court has also observed that filed together with the Petition for Grant of Letters of Administration by the Respondents, is letter from the firm of Musyoka Murambi & Associates, Advocates addressed to the Deputy Registrar of the family Division at the Milimani High Court stating that the chief of Kaptebee Location in Uasin Gishu County where the deceased herein resided, had declined to issue a letter to that effect and he was therefore seeking that the Petition be admitted without the Chief's

Letter. On the other hand, the Applicant herein filed with her Cross Petition a letter from the Chief of Karen Location stating that the deceased was a resident of Nandi Road, Karen which is his area of jurisdiction until his demise.

**64.**The herein cited **paragraph 14 of the Fifth Schedule to the Law of Succession Act** which provides for such grants, requires that the petitioner for the Grant *ad litem* should be ***the representative of a deceased person*** and further that the ***person entitled to administration is unable or unwilling to act***. In the instant case, the representation of the Respondents to administer the Estate of the deceased is contested, and there is definitely no demonstration of the inability or unwillingness on the part of the other person who also contends that she is the representative of the deceased to act as can be clearly demonstrated by the fact that she has filed a cross petition seeking to be declared the administrator of the Estate of the deceased.

**65.**In light of the issues that I have herein highlighted, it is my very well considered opinion, that considered in their totality, all these issues only go to show that the Petition for the Grant *ad litem* that was made by the Respondents herein was neither made in good faith nor with clean hands. It cannot therefore be said in all honesty, given these circumstances, that because a Grant *ad litem* is only limited to the purposes of filing and/or defending a suit on behalf of the Estate of a deceased, and does not confer power and authority to an interim administrator to distribute the Estate, then the Applicant herein will not be prejudiced in any way. This is because at the conclusion of the cause the purpose for which the Grant *ad litem* was issued,

judgement will be entered in favor of the person who represented themselves as litigating with the authority of, and therefore on behalf of the Estate.

**66.**In a situation where the issue of who ought to be the administrator of the Estate is contested therefore, such a scenario would be akin to one party in the contestation stealing a match against the other party. In this regard, the fact that there exists a petition wherein the issue of who the administer the Estate of the deceased ought to be is contested as between these parties, the fact of the existence of this cause is a material issue that ought to have been disclosed in the petition for the Grant *ad litem*, so that the court is able to make a well informed and therefore fair and just determination, after taking into consideration all the circumstances pertaining to the representation of the Estate of the deceased.

**67.**It follows therefore that the Logical conclusion of the failure by the Respondents herein to disclose this fact is that the grant was intended to, and was indeed obtained fraudulently by the concealment from the court of a matter that was in fact and indeed material to the just and fair determination of the Petition for the Grant *ad litem*. This then is a circumstance that warrants the revocation of such a grant issued as is envisaged under the provisions of **Section 76 (b) of the Law of Succession Act**.

**68.**The above being the case, it is my finding that the Applicant's Application is merited and has met the threshold for the revocation of the Grant *ad litem* herein issued on 17<sup>th</sup> October 2024 as amended on 17<sup>th</sup> December 2024 and the same is now hereby revoked. Even though the court had directed that the Application by the 3<sup>rd</sup> Respondent seeking that the Grant *ad litem* be

rectified so that she is added as a co-administrator be heard after the Application seeking for the revocation of grant, with this finding, the said Application dated 29<sup>th</sup> May 2025 has now been rendered moot and otiose for reasons that it has no legs to stand on and the court shall therefore not belabour the same but it instead stands as dismissed for want of merit with costs in the cause. The Respondents shall however bear the costs of the Application for revocation.

**Read Dated and Signed at ELDORET on 19<sup>th</sup> March 2026**

**E. OMINDE**  
**JUDGE**