

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

SUCCESSION CAUSE NO. E033 OF 2026

IN THE MATTER OF THE ESTATE OF TOROITICH KIPTORMOS LIMO

(DECEASED)

RULING

Coram: Before Justice R. Nyakundi

M/s R.M Wafula & Co. Advocates

1. Before this court is summons dated on 25th February 2026 expressed to be brought under petition for special limited grant pursuant to Sections 54 & 67, Rule 36 of Probate and Administration Rules, Rule 14 and Paragraph 18(2) of 5th Schedule as amended vide L.N No. 39 of 2002 Succession Act, Cap 160 Laws of Kenya. The application seeks the following orders:
 - a. *That letters of administration ad litem of the estate of Toroitich Kiptormos Limo (deceased) be granted to the petitioners, Julius Kipkorir Toroitich, Thomas Kiprono Toroitich and Pauline Keitany. Limited only for the purposes of representing the estate of the deceased in a civil suit to prevent the estate from being wasted, damaged, alienated, abused and or wrongfully disposed of by a non-beneficiary or non-beneficiaries.*
2. In support of the application is the affidavit by Julius Kipkorir Toroitich, Thomas Kiprono Toroitich and Pauline Keitany who they deponed as follows:
 - a. *That the full name of the deceased to whose estate the proceedings herein relate is Toroitich Kiptormos Limo and we are the petitioners named in the petition herein at the time of swearing this affidavit.*
 - b. *That the deceased herein died on 8/6/1990 as a result of cardiopulmonary arrest food poisoning, which occurred at Iten District*

Hospital as it appears in the annexed copy of the Certificate of Death marked JTP-1, upon which we have written our initials at the time of swearing affidavit.

- c. That the deceased was at the time of his death domiciled in the Republic of Kenya and his last known place of residence was Elgeyo/Marakwet.*
- d. That the deceased died intestate and left the following persons surviving him:
 - i. Julius Kipkorir Toroitich -son*
 - ii. Josephine Kwambai Toroitich - daughter*
 - iii. Salina Toroitich - daughter*
 - iv. Pauline Jepkemboi Toroitich Kuto - daughter*
 - v. Thomas Kiprono Toroitich - son*
 - vi. Christina Komen Toroitich - daughter*
 - vii. Magrina Chepkangor - daughter*
 - viii. Jane Jebiwott Toroitich - daughter*
 - ix. Pauline Keitany Toroitich - daughter*
 - x. Sally Kiprono Toroitich - daughter**
- e. That we have a letter from the Chief of our location showing the survivors of the deceased herein.*
- f. That we are related to the deceased by reason of being his sons and daughters*
- g. That the following is a full inventory of all assets and liabilities of the deceased at the time of his death including such assets if any as have arisen or known since that date;
Assets - a portion of approximately six acres comprised in title no. Moiben/Moiben Block 4 Tugen/100, registered in the name of his late cousin, whose share therein is approximately three acres.
Liabilities - nil*
- h. That we intend to represent the estate of the deceased as the plaintiffs or defendants.*

Decision

3. In considering this application, I draw inspiration from the following provisions under the Law of Succession Act which provides:

*Under **Section 3 (1)** of the said Act, a personal representative is defined as “executor” or “administrator” of a deceased person. The duties of personal representative are defined under Section 82 of the Act. It is provided: “Personal representative shall subject only to any limitation imposed by their grant, have the following powers: a. To enforce by suit or otherwise, all causes of action which by virtue of any law, survive that the deceased or arise out of his death for his estate; b. To sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties all or any part of the assets vested in them, as they think best: provided that.....”*

section 14 of the Law of Succession Act states 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.”

Sections 54 of the Law of Succession Act provides: *“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.”*

Section 55 (1) Law of Succession Act states: *“No grant of representation, whether or not limited in its terms, shall confer power to*

distribute any capital assets, or to make any division of property, unless and until the grant has been confirmed as provided in section 71.

Section 79 of the said Act provides: *“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”*

4. The grant of special letters of administration ad litem under the law of Succession Act emphasizes that such grants are temporarily, purposeful and restricted strictly to litigation either suing or defending a suit on behalf of a deceased person's estate. These grants do not authorize the distribution of the assets. The purpose and scope of Ad litem grants under the law of succession Act is very specific and crystal clear as emphasized by the following decisions:

- ***In re Estate of Henry Albert Moore (Deceased) [2025] KEHC 3946***; the court confirmed that ad litem grants are limited to filing suits for estate preservation, not for distribution, and are required only when initiating litigation on behalf of the estate. Whereas ***in re Estate of Joseph Kimeto Kirwa (Deceased) [2025] KEHC 2165***; the court highlighted that under the 5th Schedule of the Act, nominees can receive ad litem authority if the rightful administrator is unwilling or unable to act. Finally, ***in re Estate of Evalyne Nyawira Njiri (Deceased) [2025] KEHC 3601***; the court established that a limited grant expires automatically once the specific purpose, such as collecting employment benefits, is achieved.

5. This special purpose envisaged in the law for such kinds of grant is limited to what is specified by the court and the administrator cannot act ultra vires the declaration so pronounced in the instrument. In the event an individual is desirous of suing on the behalf of the estate then that person can be issued with a grant of letters of representation limited in representing the deceased in a suit. The court further in ***Re Estate of***

Jennifer Kusuro Musiwa (Deceased) eKLR the court held as follows;
“... This form is clear on the purpose for which the grant is limited - filing suit. It is envisaged that there is a cause of action for which the deceased has standing and having passed on, his/her personal representatives steps in order to pursue that claim on behalf of the estate of the deceased. By extension, to defend an existing or suit against a deceased person. Once granted, the administrator has no power to distribute the estate if successful in his/her claim on behalf of the deceased...”

6. It should be borne in mind that this grant of letters of Ad litem is simply for the administrators to administer the estate during the litigation without administering or distributing the assets of the estate of the deceased to the beneficiaries. I have reviewed the application and grounds in support of the same and I am satisfied that the applicant has met the threshold to be issued with the special grant under Section 54 of the Act. It is so ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 13TH DAY OF APRIL, 2026

.....

R. NYAKUNDI

JUDGE

