



REPUBLIC OF KENYA



Kiguru (Suing as personal representative of the Estate of the Rhoda Muthoni Kibe - Deceased) v Embakasi Ranching Co Limited & 3 others (Land Case E122 of 2022) [2026] KEELC 1952 (KLR) (5 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1952 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E122 OF 2022
LG KIMANI, J
MARCH 5, 2026**

BETWEEN

ROBERT KIBE KIGURU (SUING AS PERSONAL REPRESENTATIVE OF THE ESTATE OF THE RHODA MUTHONI KIBE - DECEASED) PLAINTIFF

AND

EMBAKASI RANCHING CO LIMITED 1ST DEFENDANT

AINSWORTH MATHEKA 2ND DEFENDANT

MADRINE WANDIA IRANDU 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

RULING

1. This ruling is in respect of the Notice of motion dated 14th April 2025 filed by the legal representatives of the estate of the Plaintiff Robert Kibe Kiguru (deceased). They seek;
 1. Spent.
 2. That the honourable court be pleased to reinstate the suit which legally abated on 29th March 2025.
 3. That this Honourable court be pleased to substitute the Plaintiff herein, Robert Kibe Kiguru (Deceased), with the Applicants, Anthony James Mwangi and Anne Njeri Kariuki, being the Legal Representatives of the Estate of Rhoda Muthoni Kibe (Deceased)
 4. That costs of this Application be provided for
2. The application is supported by the affidavit of Anthony James Mwangi Kibe, sworn on 10th July 2025, where he reiterates the grounds in support of the application.



3. The Applicants state that the suit was instituted by the Plaintiff through a Plaint dated 28th March 2022 in his capacity as the personal representative of the Estate of Rhoda Muthoni Kibe (Deceased). However, the Plaintiff passed away on 29th March 2024 before the matter could be heard. Following his death, the beneficiaries of the estate were deeply affected and required time to mourn while also facing financial challenges.
4. The Applicants depone that efforts were made by the Plaintiff's advocate to contact the beneficiaries for purposes of substitution, but the process took time as some beneficiaries reside abroad. Consequently, the suit abated on 29th March 2025, being twelve months after the Plaintiff's death. They state that counsel nonetheless kept the Court informed of the progress in obtaining a grant of letters of administration ad litem.
5. It is further stated that once the beneficiaries agreed on who would substitute the deceased Plaintiff, they promptly petitioned the court and obtained a grant of letters of administration ad litem on 10th April 2025 in Miscellaneous Application Succession Cause No. E157 of 2025 (Milimani). The Applicants therefore aver that they were unable to move the Court before the suit abated due to the foregoing circumstances but have since acted within a reasonable time and are ready and willing to proceed with the suit.

The Respondents Grounds of Objection

6. The Respondents oppose the application and filed grounds of objection dated 5th May 2025. The Respondents challenge the limited grant ad litem issued to the Applicants as being void and a nullity in law, on the ground that the grant was issued when there was an existing succession cause filed in the Thika Chief Magistrates Court. The Respondent further states that the Applicants lack the legal standing to be substituted as plaintiffs.

The Applicants' Submissions

7. The Applicants filed written submissions dated 16th May 2025, where they addressed several issues, submitting that the application is premised on a defective supporting affidavit and is thus fatally defective. Counsel submitted that the Limited grant ad litem was not obtained procedurally and that the Applicants lack the necessary legal standing to be substituted as Plaintiffs in this matter. On this issue, the Applicants submitted that they do not lack the capacity to substitute the Plaintiff, being the children of the deceased Plaintiff.

The 3rd Respondent's Submissions

8. Counsel for the Respondents submitted their grounds of objection. Counsel stated that Anthony James Mwangi Kibe and Anne Jeri Kariuki lack the capacity to replace the plaintiff, having obtained a limited grant ad litem in Milimani Succession Cause No. E 517 of 2025, while there was an existing Thika Chief Magistrates Court Succession cause 147 of 2021, where a full grant was issued to the deceased Plaintiff herein, and the same was confirmed.
9. Counsel submitted that the delay in making this application is inordinate. They also submitted that the affidavit in support of the application is defective.

Analysis and Determination

10. Having considered the Notice of Motion dated 14th April 2025, the grounds of objection and the submissions by Counsel for the parties, the following issues arise for determination.



1. Whether the limited grant ad litem issued to the Applicants is defective
 2. Whether the Applicants have the necessary capacity to be substituted as Plaintiffs.
 3. Whether the prayer sought ought to be granted.
11. The issue of whether the affidavit in support of the application is defective was decided by the ruling of Lady Justice Omenge dated 26th June 2025, where the affidavit was struck out with leave to the Applicants to file a proper affidavit or affidavits within 14 days. The affidavit of the 1st Applicant was filed on 12th July 2025 in compliance with the court order.
 12. The Court shall deal with the 2nd and 3rd issues at the same time since they deal with a similar matter. The Respondents challenge the Limited grant ad litem issued to the applicants and their capacity to be appointed as administrators through the grant issued on 10th April 2025. The basis for this challenge is that the deceased Plaintiff in this suit sued in the capacity as personal representative of the estate of Rhoda Muthoni Kibe (deceased). He obtained a full grant of letters of administration as a sole administrator in Thika Chief Magistrate's court succession cause number 147/2012, and the same was confirmed on 10th April 2014. Counsel for the Respondent argues that where there is a confirmed grant of a letter of administration, a grant ad litem ought not to have been issued.
 13. The Applicants contend that the grant issued to them is proper as it was issued following the procedure provided under the Law of Succession Act. In particular, Section 54 and paragraph 14 of the 5th schedule of the Law of Succession Act.
 14. Counsel for the Applicants argued that the grant issued to the deceased Plaintiff became null and inoperative upon his demise, and the court in Thika CM Succession cause 147/2021 could not substitute him as administrator to the estate of Rhoda Muthoni Kibe (deceased). This was found in John Karumwa Maina vs Susan Wanjiru Mwangi (2015) eKLR, where the High Court cited the decision in FLORENCE OKUTU NANDWA AND ANOTHER –V- JOHN ATEMBA KOJWA, Court of Appeal Civil Appeal in Civil Appeal No. 306 of 1998 at Kisumu, where it was held that a court should not issue a grant to a person who has not sought it. The judge stated as follows:-

“A grant of representation is made in personam. It is specific to the person appointed. It is not transferable to another person. It cannot, therefore, be transferred from one person to another. The issue of the substitution of an administrator with another person should not arise. Where the holder of a grant dies, the grant made to him becomes useless and inoperative, and the grant exists for the purpose only of being revoked. Such grant is revocable under section 76 of the Law of Succession Act. Upon its revocation, a fresh application for grant should be made in the usual way, following procedures laid down in the Law of Succession Act and the Probate and Administration (Rules). I agree with the respondent that there cannot be a substitution of the dead administrator by his wife in the manner proposed by the applicant.”
 15. The court considers that the grant herein was not issued for purposes of substituting the Plaintiff in the succession Cause in Thika, but limited for the purposes of prosecuting this suit under S. 54 and Para 4 of the 5th Schedule of the Law of Succession Act. In the court's view, the law clearly provides for taking out a grant ad litem for prosecuting a pending suit. The said Sections state as follows:

Section 54 provides for Limited grants.



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.

Paragraph 14 of the 5th Schedule of the LOS Act provides for Administration limited to suit and states that;

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.

16. The court further finds that if the Respondents wish to challenge the Limited grant ad litem, issued to the Applicants, following the reasons advanced in this case, there is a procedure for such a challenge under S. 76 of the Law of Succession Act, which provides for revocation and annulment of the grant and states that;

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—

17. The procedure for revocation of grant is found in Probate and Administration Rules under Rule 44.
18. As it stands now, the grant herein was issued by a competent court and the same has not been revoked or nullified. The Respondent has also not claimed that there is a personal representative appointed by the court to replace the deceased Plaintiff, Robert Kive Kiguru, in Thika CM Succession Cause No. 147 of 2012.
19. The court thus finds that the validity of the Limited grant ad litem issued to the Applicants and the Applicant's competence to hold the same have not been challenged following the process laid down in law. The court also finds that, based on the grant issued, the Applicants have the necessary capacity to make the application at hand.
20. On the issue of whether the application ought to be granted, the court is guided by Order 24 of the Civil Procedure Rules 1, 3, 7(2), which states as follows:

“If a party dies and the right to sue survives, the court may substitute the legal representative to continue the case. If no application is made within one year, the suit abates against the deceased.”

7(2) Death of one of several plaintiffs/defendants where the right to sue survives.

21. The deceased Plaintiff died on 29th March 2024; thus, the suit abated on 29th March 2025. The limited grant ad litem was issued to the Applicants on 10th April 2025, and the present application was filed on 14th May 2025. In the court's view, the period of delay in filing the present application is not inordinate.
22. The Applicants have explained the delay in filing the present Application. They stated that initially they were devastated by their father's death, whose illness before death had devastated them financially. They further depone that some of their siblings reside abroad, and getting them together was a challenge.



23. From the foregoing, the court is satisfied with the reasons given and finds that the Applicants were prevented by sufficient cause from continuing with this suit by way of filing the present application.
24. The final order of the court is that the application dated 14th May 2025 has merit and is allowed in terms of prayers 2 and 3. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI, THIS 5TH DAY OF MARCH 2026

HON. LADY JUSTICE L.G. KIMANI

JUDGE

In the Presence of:-

Nalyanya for the Applicants

Karwanda for the 3rd Defendant

M/S Kirina for the 4th Defendant

