



REPUBLIC OF KENYA



**In re Henry Albert Moore (Deceased) (Probate & Administration
E3379 of 2022) [2025] KEHC 3946 (KLR) (Family) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3946 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY**

PROBATE & ADMINISTRATION E3379 OF 2022

H NAMISI, J

MARCH 27, 2025

**IN THE MATTER OF
CHARLES HENRY MOORE PETITIONER**

RULING

1. Before the Court is a Petition for Special Limited Grant dated 23 September 2022, presented by the Petitioner herein in his capacity as son and sole surviving relative of the Deceased. The Petitioner seeks a special limited Grant, limited for purposes of pursuing the chargee interest registered in Memorandum of Charge over parcel of Land LR Number 2255/1 and 2255/2, Karen, Nairobi. The same was registered by the Deceased on 8 March 1966.
2. The Deceased passed away on 13 November 1979, while domiciled in England. He died intestate. The Petitioner presented a certified copy of Entry of Death to confirm this. According to the Petitioner, no Grant of Representation has been issued in respect of the Deceased's estate.
3. The Petition is supported by an Affidavit sworn by the Petitioner, in which he stated that at the time of his death, the Deceased had no known assets. However, the Deceased held a title over LR No 2251/1, old North East of Ngong Township in Kiambu District, now Karen and LR No 2251/2, old east Township of Kiambu Township in Kiambu District, now Karen. Both properties comprised of Grant registered as I.R 129/1.
4. The Petitioner averred that prior to his death, the Deceased was the registered owner of LR 2251/1 and LR 2251/2, which he sold to one Kanji Navan Patel (now deceased) for the sum of Kshs 20,000/=. The two properties were transferred to the said Kanji Navan Patel on 22 July 1965. The Deceased registered a Memorandum of Charge against the title pending payment of the balance of the purchase price, which was Kshs 10,000/=.
5. Arvind Kanji Patel, the Administrator of Kanji Navan Patel (Deceased), filed a Replying Affidavit opposing the Petition. The Grant in respect of the estate of Kanji Navan Patel was issued on 14



February 1997 and confirmed on 14 July 1997. The suit properties herein were listed as part of the estate of the Kanji Navan Patel. The Respondent also produced a copy of certificate of search confirming that the property is registered in the name of Kanji Navan Patel.

6. It was the Respondent's contention that the Petitioner does not have any mandate to pursue the suit property as it does not belong to him or the Deceased herein. Further, the Respondent argued that the court that is clothed with the jurisdiction to hear and determine this issue is the Environment and Land Court and not the High Court, as envisaged in Article 162 (2) of the *Constitution*. According to the Respondent, the primary duty of the Probate Court is to distribute the estate of a deceased to the rightful beneficiaries. Disputes over ownership of assets cannot be placed before this forum.
7. The Petitioner filed a Further Affidavit and noted that the provisional certificate of title presented by the Respondent indicated a charge to the Deceased herein. He argued that the provisions of section 67 (1) of the *Law of Succession Act* allow for a special limited Grant to be issued when necessary for a particular matter. In this instance, the Petitioner seeks a special limited Grant to pursue or safeguard the Deceased's interests in land.
8. The Application was canvassed by way of written submissions.

Analysis and Determination

9. I have keenly read the Application, the responses and submissions by the parties. The issue for determination herein is whether or not to issue a special limited Grant to the Petitioner.
10. The Respondent's submissions began with the issue of jurisdiction of this Court to entertain this suit. The Respondent reiterated that the primary duty of the Probate Court is to distribute the estate of the Deceased to the rightful beneficiaries and where there is a dispute over ownership, then the same should be placed before the appropriate forum. In this instance, the appropriate forum would be the Environment and Land Court.
11. On this point, I concur with the Respondent. In deed, this Court would not be the appropriate forum to determine the issue of ownership or other interests over the suit property. The Court that is clothed with that jurisdiction is the Environment and Land Court. However, one question arises as to how any beneficiary would have locus to pursue a cause before the Environment and Land Court in respect of the interests of a deceased person without first being granted the authority to do so. It is for this reason that one must first pursue a Grant of representation in the Probate Court, to enable him/her pursue a claim in any other court on behalf of the deceased. As rightly submitted by the Respondent, it is the grant of Letters of Administration that gives a person the mandate to deal with the property of a deceased person.
12. For clarity, the issue for determination before this Court is not the ownership of the suit property. The issue is whether the Petition satisfies the requirements for special limited Grant.
13. Sections 54 and 67 (1) of the *Law of Succession Act*, Cap 160 of the Laws of Kenya and Rule 36 of the *Probate and Administration Rules* provide the circumstances under which a Special Limited Grant may be issued by the Court.
 54. 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.

(67)(1) 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 of such grant,



inviting objections thereto to me 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.

- (36)(1) Where, owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defuncti of the estate.
14. Further, the Fifth Schedule provides for forms of limited Grants, which include Grants for special purposes such as administration limited to property in which person has beneficial interest and administration limited to suit.
15. *In Re the estate of Helena Wangechi Njoroge (Deceased)* (2015) eKLR the Court held the following:
“Section 79 vests the property of the deceased in the personal representative, so that the latter can then exercise the powers set out in Section 82 and discharge the duties set out in Section 83 of the Act. It should be pointed out that that the provisions in Section 82 can only be fully exercised by a substantive administrator that is the person holding, not a limited grant, but a full grant. Likewise, the duties imposed by Section 83 are to be discharged to their fullest by the holder of a substantive grant of representation...
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 defence the estate against third parties.”
16. The Petitioner has presented a birth certificate, demonstrating his relationship to the Deceased. Further, from the title documents presented by both parties, it is clear that a Memorandum of Charge was registered by the Deceased against the property occupied by the beneficiaries of the estate of Kanji Navan Patel (deceased). This denotes some interest by the estate of Deceased.
17. I, therefore, find that the Application is merited and I invoke the powers vested in this Court by Rule 73 of the *Probate and Administration Rules* and make the following orders:-
i. A Special Limited Grant be and is hereby issued to the Petitioner only for purposes of pursuing the charge interest registered in the Memorandum of Charge over Land Reference No 2255/1 and 2255/2, Karen in Nairobi County.
ii. I make no orders on costs.
18. For the avoidance of doubt, this decision does not relate to the ownership of the aforementioned properties and neither does it confer any ownership rights over the same.

DATED AND DELIVERED AT NAIROBI THIS 27 DAY OF MARCH 2025

HELENE R. NAMISI

JUDGE

Delivered on virtual platform in the presence of:

N/Afor the Petitioner



Ms. Opiyo.....for the Respondent

Libertine Achieng Court Assistant

