



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Roselyne Kanana Mwirigi (Deceased) (Succession Cause E014 of 2025) [2025] KEHC 5291 (KLR) (29 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE E014 OF 2025**

RC RUTTO, J

APRIL 29, 2025

IN THE MATTER OF THE ESTATE OF ROSELYNE KANANA MWIRIGI(DECEASED)

RULING

1. The applicant petitioned this Court under a certificate of urgency seeking grant of letters of administration *ad colligenda bona* of the estate of Roselyne Kanana Mwirigi (deceased) who died domiciled in Washington in the United States of America. She states that she is seeking the grant *ad colligenda bona* for the limited purpose of collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the same until further representation is granted. The applicant further states that she has petitioned this court in her capacity as the daughter of the deceased and that she will faithfully administer the estate of the deceased in accordance with the law.
2. The Petition is supported by an affidavit in support of the petition and a verifying affidavit both sworn on 12th February 2025 by the applicant. She deponed that she is related to the deceased by reason of being her only daughter; that the deceased died leaving no will; that she needs to file suit in respect of the deceased motor vehicle that was involved in a road traffic accident; that she needs to gain access to the deceased safety deposit box in Co-operative Bank Athi River Branch, that contains title deeds that are vital towards identifying properties of 2 plots of land located in Mavoko and 1 plot located in Tala that will be listed as part of the succession process.
3. In support of this petition, the petitioner has annexed a copy of the certificate of death of a citizen occurring abroad and a letter dated 28th January 2025 from the Ministry of Interior and National Administration, State Department for Internal Security and National Administration Office of the Assistant Chief Kalandini Location. The letter is addressed to Magistrate.
4. I have perused the petition before court and do note that the petitioner herein has not stated the provisions of law pursuant to which she has moved the court and/or the basis of her petition. The applicant only seeks that the letters of administration *ad colligenda bona* be granted to her in her capacity as the deceased daughter.
5. This Court cannot overemphasize enough that a court of law must be moved under a precise and particular provision of the law. This is more profound where a court is clothed with various



jurisdictions under the Constitution and various Statutes, like this High Court. A court should never be left to second guess under what provision of the law or which jurisdiction among its various jurisdictions is it being moved. This fact has been elucidated by the Supreme Court in various decisions. In Daniel Kimani Njibia v Francis Mwangi Kimani & another [2015] eKLR, the apex Court held thus:

“In the Hermanus case, this Court had indicated how it should be moved, thus [paragraph 23]: “...It is trite law that a Court of law has to be moved under the correct provisions of the law.” Hence, without thus identifying the proper legal framework for the motion, an application is liable to be struck out.” (See also Michael Mungai v Housing Finance Co. (K) Ltd & 5 other [2017] eKLR).

6. Fully cognizant of the foregoing, I have holistically perused the petition and it is clear that this Petitioner is seeking grant of letters of administration ad colligenda bona. Hence guided by Article 159 of the Constitution to focus on substantive justice I will consider the petition on its merit for what it is worth. The Law of Succession Act allows an application for a limited grant of letters of administration ad colligenda bona for purposes of collecting and preservation of the estate. This is provided for under rule 36 of the Probate and Administration Rules which provides that:

- (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 of the deceased.
- (2) Every such grant shall be in Form 47 and be expressly limited for the purpose only of collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the estate and until a further grant is made.
- (3) Application for such a grant shall be by petition in Form 85 signed by the applicant in the presence of not less than two adult witnesses supported by an affidavit containing the material facts together with the reasons for the application and showing the urgency of the matter and shall be made at the principal registry or at the Mombasa, Kisumu, Nakuru, Nyeri, Kisii, Kakamega, Meru, Machakos, Eldoret and Bungoma registries.
- (4) The provisions of rule 7(4) shall not apply to applications under this rule.
- (5) Copies of the proceedings and of the grant when issued shall be served upon such persons (if any) and in such manner as the court shall direct.

7. Courts have interpreted this section to provided for a limited grant of letters of administration ad colligenda bona for purposes of collecting and preservation of the estate. So that, this section is not to be used as a short avenue to gain access to the estate of the deceased for purposes of administration and/or exploitation. The later calls for application for grant of letters of administration.

8. A keen evaluation of the petition before court reveals that the applicant’s special circumstances for seeking grant of corrigenda bona are two namely: the need to file suit in respect of the deceased motor vehicle that was involved in a road traffic accident, and the need to gain access to the deceased safety deposit box in Co-operative Bank Athi River Branch, that contains title deeds that are vital towards identifying properties 2 plots of land located in Mavoko and 1 plot located in Tala that will be listed as part of the succession process.



9. The first ground relates to the need to file a legal suit concerning a motor vehicle that belonged to the deceased and was reportedly involved in a road traffic accident. This Court notes that the applicant has not provided sufficient information or documentation regarding the specific vehicle or the nature of the intended legal action. Without these crucial details the court is unable to determine the applicant's interest in the matter and whether there exists any special or urgent circumstances justifying involvement in the collection or management of the deceased estate. What estate of the deceased is to be collected and/or preserved in this case? That crucial question has not been answered. This Court is not convinced that for one to file a suit in the circumstances stated above the only avenue is by way of the orders sought herein. Therefore the court cannot authorize and/or grant the colligenda bona in the circumstance.
10. The second ground concerns the applicant's request to access the safe box at Co-operative Bank Athi River Branch. Again, the court observes no detailed information has been presented regarding the account or the contents there in. The applicant is speculative and has not provided a valid reason or basis for grant of access.
11. Granting such an order without this critical contest would be an abuse of the court's process as it will effectively be issuing a broad and unrestricted authorization, which contradicts the legal requirement that only urgent and special circumstances that are so great that it would not be possible for the court to make a full grant of representation. It cannot be overemphasized that by the safe deposit box being securely locked up in a bank, it is more well preserved from wastage and will be available for access through the due process of succession. As such the court finds no special circumstance that justify the issuance of the orders being requested.
12. Besides Rule 36(3) requires the petition to be signed by the applicant in the presence of not less than two adult witnesses supported by an affidavit containing the material facts together with the reasons for the application. In this instance this court notes that the mandatory provision requiring supporting affidavit of not less than two adults was not complied with.
13. I find that the petition is for dismissal and it is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 29TH DAY OF APRIL, 2025

RHODA RUTTO

JUDGE

In the presence of;

.....for the Petitioner

Sam Court Assistant

