



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Paul Muigai Wakabu (Deceased) (Succession Cause
2653 of 2002) [2024] KEHC 9295 (KLR) (Civ) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9295 (KLR)

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

CIVIL

SUCCESSION CAUSE 2653 OF 2002

H NAMISI, J

JULY 26, 2024

RULING

1. Before the Court is Summons dated 21 May 2024 seeking the following orders:
 - i. That the Honourable Court be pleased to review and/or reverse the decision of the Deputy Registrar to dismiss this matter for want of prosecution;
 - ii. That consequent to the grant of prayer (i) above, the Cause herein be reinstated;
 - iii. That Peter Waihumbu Muigai be appointed as co-Administrator of the estate of the deceased;
 - iv. That the costs for the Application be provided for.
2. The Application is supported by the Affidavit of Geoffrey Murihia Muigai, one of the Administrators and premised on the grounds that the Administrators were at an advanced stage in reaching an agreement with the other beneficiaries on the proposed mode of distribution of the estate, and that the Administrators and majority of the beneficiaries of the estate are now agreed on the distribution of the estate.
3. The Grant of Letters of Administration Intestate was made in February 2003. It was not until April 2017 that the Administrators filed Summons for Confirmation of Grant. The Application was not heard. At paragraph 3 of the Supporting Affidavit, the Applicant depones thus:

(3) That due to the failure by the Administrators/beneficiaries of the estate, there was a delay to prosecute an application filed in this Honourable Court on 10th April 2017, seeking an order for confirmation of Grant herein, and as a consequence the cause has now been dismissed for want of prosecution.
4. The Administrator further depones that a majority of the beneficiaries are now in agreement as to the mode of distribution of the estate as well as the addition of a third co-administrator, Peter Waihumbu Muigai. Attached to the Affidavit is a Consent to the Confirmation of Grant and Consent to the



Appointment of an Administrator, both of which are signed by 5 out of the 9 beneficiaries. There seems to be no consensus on the issue of the appointment of a third administrator, and i decline to grant that prayer.

5. I have looked at the proceedings in the court file and the same indicate that this matter was in court on several occasion. Each time, parties failed to attend. Eventually, on 14th November 2023, the file was closed by Hon. Lady Justice P. Nyaundi. Only then were the sleeping Administrators awoken, and even then it took them five months before they sprung into action to file this application to reinstate.
6. Article 159 (2) (b) of the Constitution provides that courts and tribunals shall be guided by the principle that justice shall not be delayed. It is the duty of the court, Advocates and litigants to ensure that matters are concluded expeditiously without inexcusable delay. This principle is encapsulated in sections 1A and 1B of the Civil Procedure Act, Cap 21 of the Laws of Kenya.
7. Pursuant to the provisions of section 3A of the Civil Procedure Act, this court enjoys a wide discretion over matters and issues before it, including the question as to whether or not it should reinstate a suit dismissed on account of want of prosecution.
8. One of the issues that confronts me is the need for expeditious conclusion of suits. It is rather unfortunate that cases such as these continue to fill the shelves as Administrators and beneficiaries continue to drag their feet in filing for confirmation of grants. With this in mind, I order as follows:
 - i. The Summons dated 21st May 2024 is allowed in terms of prayers 1 and 2.
 - ii. The Summons for Confirmation filed on 10th April 2017 to be fixed for hearing forthwith;
 - iii. Any party objecting to the confirmation of Grant to file their objections within 30 days from the date hereof;
 - iv. The matter to be mentioned before the Honourable Deputy Registrar on 27th August 2024 to confirm filing of any objections and fixing hearing date for the Summons for Confirmation of Grant.
 - v. Costs in the cause

DATED AND DELIVERED AT NAIROBI THIS 26 DAY OF JULY 2024

HELENE R. NAMISI

JUDGE

Delivered on virtual platform in the presence of:

Mr. Kimanifor the Applicant

Ms. Njueni for Beneficiary

