



In re Estate of Mwangi Gichohi Wairagu (Deceased) (Succession Cause E1085 of 2021) [2024] KEHC 10505 (KLR) (Family) (29 August 2024) (Ruling)

Neutral citation: [2024] KEHC 10505 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E1085 OF 2021**

H NAMISI, J

AUGUST 29, 2024

**IN THE MATTER OF THE ESTATE OF MWANGI GICHOHI
WAIRAGU ALIAS SILAS MWANGI GICHOHI ALIAS CYRUS MWANGI
GICHOHI WAIRAGU ALIAS SILAS MWANGI GICHOHI (DECEASED)**

**IN THE MATTER OF
ABDULLAHI KAMBI GURACHA ADMINISTRATOR**

RULING

1. Before the Court is Summons dated 29 February 2024 seeking the following orders:
 - i. That the Honourable Court be pleased to review, vary and/or set aside the orders made by Hon. Mr. Justice Magare Dennis Kizito Ngwono on the 16th day of January 2023 dismissing/ striking out/closing and/or terminating the succession cause herein and all other consequential orders thereto.
 - ii. That the Honourable Court be pleased to reinstate the succession cause herein
 - iii. That the Honourable Court be pleased to slate down for hearing the Summons for Confirmation of Grant dated the 29th day of December 2023 filed in the cause herein
 - iv. That the costs of the application be in the cause.
2. The Application is supported by the Affidavit of Mary Wambui Mwangi, the Administrator and the grounds on the face of the Application.
3. In the Affidavit, the Administrator/Applicant, widow to the Deceased, states that the Letters of Administration Intestate were made to her on 29 September 2021. Upon the lapse of the 6 months, the Administrator/Applicant tried to convene a meeting between herself and the beneficiaries. It was,



however, difficult to do so since two beneficiaries reside abroad. The meeting was finally convened in December 2023, and all the beneficiaries executed the consent.

4. It was the Administrator/Applicant's averment that, in addition to the logistical challenges of convening a meeting, they also faced financial challenges. By the time the family had sorted out its financial challenges and filed the Summons for Confirmation dated 29 December 2023, the matter had already been dismissed by the Court.
5. From the proceedings, the matter was placed before the Deputy Registrar on 20th December 2022, when the Court directed that notice do issue to the Administrator for reactivation/closure of the file. The same came up for directions on 16th January 2023, when parties were absent. The file was subsequently closed.
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 non-attendance.
8. The Administrator/Applicant has explained the reason why she was unable to file for confirmation of Grant. It is notable that whereas the file was closed in January 2023, it was only until February 2024 that the Administrator/Applicant moved the court to reinstate the matter. Although the delay cannot be said to be inordinate, the Administrator/Applicant has sufficiently explained the financial challenges she faced, which affected her ability to properly instruct counsel.
9. One of the issues that confronts me is the need for expeditious conclusion of suits. With this in mind, I order as follows:
 - i. The Summons dated 29th February 2024 is hereby allowed.
 - ii. The Summons for Confirmation of Grant dated 29th December 2023 shall be set down for hearing forthwith;
 - iii. Mention on 10th September 2024 before the Deputy Registrar for purposes of fixing a hearing date for the Summons for Confirmation of Grant;
 - iv. Costs in the cause

DATED AND DELIVERED AT NAIROBI THIS 29 DAY OF AUGUST 2024

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Mr. Barasa.....for the Applicant

