



**In re Esatate of Seif Athman (Deceased) (Succession Cause
51 of 2016) [2023] KEHC 18460 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18460 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
SUCCESSION CAUSE 51 OF 2016
GMA DULU, J
MAY 31, 2023**

**IN THE MATTER OF
RASHID MWAMBI SEIF PETITIONER**

RULING

1. Before me is a notice of motion dated February 15, 2023 filed by the petitioner/administrator Rashid Mwambi Seif through counsel Mwazighe & Company Advocates under order 11 rule 3 and order 51 rule 1 *Civil Procedure Rules 2010*, as well as section 1A, 1B, and 3A of the *Civil Procedure Act* (cap 21).
2. The application seeks two orders as follows:-
 1. That this court be pleased to issue an order opening/activating these proceedings in the estate of Seif Athman.
 2. Costs of this application be in the cause.
 3. The application has grounds on the face of the notice of motion that there is no confirmed grant in respect of the estate of the deceased, and that on July 21, 2022 the court closed the file due to being misled by the applicant who is a layman, and that the interests of justice and fairness will be served if the prayers sought are granted.
 4. The application is supported by an affidavit sworn on February 15, 2023 by Rashid Mwambi Seif the applicant/petitioner herein in which it was deponed that as no confirmed certificate of grant of letters of administration has been issued yet and that, the assets of the estate have not been distributed.
 5. Counsel for the applicant filed written submissions to the application, and emphasized this court's powers to reopen the file under the *Civil Procedure Act* and *Civil Procedure Rules*.



6. I have perused the file and noted that this succession matter was initially filed as Voi Magistrates as P&A Case No 24 of 2011. It was later converted to Voi High Court P&A No 51 of 2016 when a High Court Registry was established at Voi.
7. Though the matter was advertised in the Kenya Gazette of August 5, 2011 as gazette notice No 9425, I have not seen any copy of the grant of representation of letters of administration in the file, nor a certificate of confirmed grant. In addition, this matter was dormant for many years before it was closed by the court, when the applicant/petitioner informed the court that he had completed the administration of the estate herein.
8. Having considered the application, I am of the view that though the applicant's/petitioner's counsel has relied exclusively on the *Civil Procedure Act* (cap 21), and rules, in my view this court has wide powers under section 47 of the *Law of Succession Act* (cap 160) to consider such an application and make any orders which serve the best interests of justice in succession matters.
9. Considering that indeed the succession proceedings herein have still not been concluded, and now the applicant has on record an advocate who filed this application and will guide, advise and act for him, I will set aside this court's orders closing the file herein in the interest of justice, and reopen the matter so that the succession proceedings will proceed to conclusion.
10. I therefore allow the application and order as follows:-
 1. This court hereby orders reopening/activating of the proceedings herein in the estate of Seif Athman.
 2. The applicant will progress the matter and ensure that the summons for confirmation of grant is filed within this year 2023.
 3. This matter will be mentioned on September 20, 2023 to confirm further progress.
 4. The costs of this application are in the cause.

DATED, SIGNED AND DELIVERED THIS 31ST DAY OF MAY, 2023 VIRTUALLY IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:

Mr. Mwazighe for applicant

Mr. Otolo court assistant

