



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Sabina Namukuru Okere (Deceased) (Succession Cause
129 of 1987) [2023] KEHC 18568 (KLR) (30 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18568 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 129 OF 1987**

PJO OTIENO, J

MAY 30, 2023

**IN THE MATTER OF THE ESTATE OF SABINA NAMUKURU OKERE
(DECEASED)**

BETWEEN

JOHN MAKOKHA OKERE PETITIONER

AND

ANNA SHEUNDA MWAMBAYI 1ST OBJECTOR

FREDRICK ANTHONY OKERE 2ND OBJECTOR

TIMOTHY NAMUKURU JUMA 3RD OBJECTOR

RULING

1. It is now settled that mistake or default alone, when capable of explanation, should not be the only reason to drive a litigant from the seat of justice. While the court was informed by both counsel present in court on the December 5, 2022, (Mr Omoiti and Ms Aligula) that no accounts had been filed, evidence has now emerged that the same had in fact been filed and evidence availed to show that service was attempted albeit that email address was erroneous hence service was not delivered. On that basis, I would set aside the orders of December 5, 2022.
2. However, the remedy of setting aside is employed to enable the ends of justice be reached. Here by virtue of the default order, new administrators were appointed and they assert that they are in the cause of having the estate transmitted to those entitled and have confirmed to court that the applicant will not be prejudiced by any adverse action like eviction but will in fact retain the portion of the estate he occupies currently.



3. The question the court must pose and answer is what benefit, or end of justice would be served by setting aside? The flip side of that question is what prejudice will visit the applicant if the default order is not set aside.
4. The court has anxiously considered the matter with full appreciation that its mandate is to navigate the litigation toward having the estate transmitted to those entitled. The court has given due consideration to the age of this matter in court for the last thirty six (36) years and takes the view that everything must be done now to bring the matter to a closure. The court considers the current administrators as new brooms in the house able to sweep cleaner. The court equally envisages no prejudice that stands to visit the applicant if status quo is allowed to maintain and the estate gets distributed.
5. On that basis, even though there is a plausible explanation for the steps leading to the exparte order, the court finds that setting aside will not further interests of justice but delay justice and ultimate conclusion of the administration.
6. For the foregoing reason, the application dated December 6, 2022 even though brought with admirable speed, is dismissed. Let each party bear own costs. Matter be heard in court on October 16, 2023 for purposes of distribution.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 30TH DAY OF MAY 2023.

PATRICK J. O. OTIENO

JUDGE

In the presence of:

Mr. Omoiti for Administrator/Respondent

No appearance for Luchivya for the Applicant

Court Assistant: Polycap

