



**In re Estate of Miruka Marora (Deceased) (Succession Appeal 58 of 2023)
[2023] KEHC 26965 (KLR) (19 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 26965 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION APPEAL 58 OF 2023
JM CHIGITI, J
DECEMBER 19, 2023
IN THE MATTER OF THE STATE OF MIRUKA MARORA (DECEASED)

IN THE MATTER OF
JOHN OTONDI MARORA APPELLANT**

(Being Appeal from the order of Honourable P.K. Mutai dated and delivered on the 17th May 2023 in KISII SUCC. CAUSE No.315 of 2018)

JUDGMENT

Brief background:

1. In order to commence the Succession Cause, the Petitioner the Appellant herein sought a letter from the Area Chief as shown in the letter of the Chief Pg 32 of the Record of Appeal. The due process was followed and the grant of letters of administration intestate were issued on 15th day of June 2020. The said grant is annexed in Pg 21 of the record of appeal.
2. On the 4th day of October 2021 the Petitioner/Appellant applied to this court for the confirmation of the grant. When the case came up on 24th November, 2021 the court directed that the chief to re-issue another letter stating all the beneficiaries. The chief wrote another letter dated 28th December, 2021. The court further directed that the chief should appear in court. The chief did not appear in court as was directed and the cause was dismissed.
3. On the 17th day of May 2023 when this matter come up for the confirmation of the grant of letters of administration before Hon. P.K Mutai SRM dismissed the suit for failure on the part of the chief to comply with court directions that he attends court.
4. Being dissatisfied with the order of dismissal, the Appellant lodged an Appeal on before this Honourable Court on the following grounds:



- i. The learned trial Magistrate erred in law in dismissing the cause for non-attendance of the chief in court.
 - ii. The learned trial Magistrate erred in law and in dismissing the cause without appreciating that the chief had done her part in introducing the appellant in the primary document.
5. He prays that:
- i. That the Appeal herein be allowed and the dismissal orders be set aside and the matter be set down for confirmation of the grant by the court and/or any other court of competent jurisdiction.
 - ii. The Appellant filed submissions as directed by the court on 7th December, 2023.

Analysis and Determination

6. This being a first appeal the court is obliged to reconsider and re-evaluate the evidence adduced in the trial court and to draw its own conclusions on the same.
7. In the case of *Selle & another v Associated Motor Boat Co. Ltd* [1968] EA the court held as follows: -
- “...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”
8. The orders were issued by the trial court as a result of non-attendance of the chief during confirmation of the grant.
9. The petitioner and his advocates were present in court during the dismissal.
10. It is this court’s finding that the trial court fell into error when she dismissed the suit in the circumstances. Having directed the chief to attend court on numerous occasions in vain, the trial court should have proceeded to determine the suit on merit without the evidence of the witness as opposed to dismissing the suit.
11. The letter by the chief is only intended to introduce the parties involved and the beneficiaries. The chief is not a party to the proceedings
12. In any event, there is no provision under the *Law of Succession Act* requiring the chief to attend court.

Order:

1. The Appeal is allowed.
2. The order issued on 17th day of May 2023 is set aside.
3. The matter shall be set down for the hearing of the confirmation of the grant within 14 days of today’s date by any other court of competent jurisdiction.
4. No orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF DECEMBER, 2023.

JOHN CHIGITI (SC)



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JUDGE

I certify that this is a true copy of the original

Signed

Deputy Registrar

