



**In re Estate of Apel Moranga Abea (Deceased) (Succession Cause  
131 of 1995) [2023] KEHC 27134 (KLR) (18 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27134 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
SUCCESSION CAUSE 131 OF 1995  
TA ODERA, J  
DECEMBER 18, 2023  
IN THE ESTATE OF APEL MORANGA ABEA (DECEASED)**

**IN THE MATTER OF  
JANES KEMUNTO ABERE ..... APPLICANT**

**RULING**

1. By a Notice of Motion Application filed under a Certificate of Urgency and dated 16.5.2023, the Applicant seeks the following orders:-
  1. Spent.
  2. That this Honourable Court be pleased to set aside its orders of 9<sup>th</sup> day of July, 2015 revoking the grant.
  3. That the Honourable Court be pleased to reinstate the revoked grant for confirmation on merit.
  4. That costs of this application be in the cause.
2. The grounds on the face of the Application are that the Grant of Letters of Administration Intestate was issued on 26.5.1995. The said Grant was revoked on 9.7.2015. The Applicant had health problems and school fees for the children hence the delay in prosecuting the matter. The Applicant also stated that she was not served with any notice to show cause. She stated that she was desirous of concluding the matter.
3. In support of the Application was an Affidavit sworn by the Applicant on 16.5.2023. She deponed that the Grant of Letters of Administration Intestate were issued on 26.5.1995. The said Grant was revoked on 9.7.2015. She deponed that she was a peasant farmer and that she was still looking for money for her children's school fees hence the delay in prosecuting the cause. She deponed that she was unwell and was constantly in and of hospital thereby causing further delay. She further deponed that



she was not served with the notice to show cause why the grant should not be revoked. She deponed that she was willing to have the matter concluded and urged the Court to reinstate the revoke grant for confirmation on merit.

### Determination

4. Indeed, a Grant of Letters of Administration Intestate was issued in favour of JANES KEMUNTO ABERE, the Applicant herein, on 26.5.1995 that was over 28 years ago. Ideally, the Applicant ought to have applied for confirmation on or around December 1995. However, as at today, the same has not been done. On 9.7.2015 and in the absence of parties, the Grant was revoked under Section 76(d) (i) of the *Law of Succession Act* for failure to take steps to prosecute the matter.
5. The Applicant prays for orders of review to set aside the Ruling on account of not having been served with the notice to show cause. She further deponed that she failed to apply for confirmation on account of her ill health and difficulties in raising school fees for her children.
6. Rule 63 of the *Probate and Administration Rules* provides that Order 45 of the *Civil Procedure Rules* shall apply to succession proceedings. Order 45 provides thus:

Order 45- Application for review of decree or order

- (1) Any person considering himself aggrieved-
  - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
  - (b) by a decree or order from which no appeal is hereby allowed,

And who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for review of judgment to the court which passed the decree or made the order without unreasonable delay.

- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant or when, being respondent, he can present to the appellate court the case on which he applies for the review.

7. In the present case, the Applicant's case is that she was not served with a notice to show cause why the grant should not be revoked. I have considered the record and there is indeed no indication that the notice to show cause was ever served upon the Applicant. I cannot emphasize enough of a party's right to be heard. See *Evans Odhiambo Kidero & 4 Others v Ferdinand Ndungu Waititu & 4 Others*, Supreme Court Petition No. 18 of 2014 as consolidated with Petition No. 20 of 2014 [2014] eKLR; Pars. 257-261; *Mohamed Abdi Mahamud v Ahmed Abdullahi Mohamad & 3 Others* Supreme Court Petition 7 of 2018 consolidated with Petition 9 of 2018
8. I am therefore satisfied that the Applicant has rightly invoked this Court's authority to review its orders of 9.7.2015.



9. That said, it is important to note that whereas no notice was issued upon the Applicant, she had stayed for over 20 years as at 9.7.2015 without prosecuting the matter.
10. However, can justice still be done the foregoing notwithstanding? The answer is in the affirmative.
11. Section 47 of the *Law of Succession Act*, Cap 160 of the Laws of Kenya and Rule 73 of the *Probate and Administration Rules* vest this Court with jurisdiction to issue such decrees and orders as may be expedient and necessary for the ends of justice.
12. In view of the circumstances of the present case, that the Applicant was not served with the notice to show cause, that she was unable to prosecute the matter owing to ill health and financial hardships, I am inclined to allow the Application as prayed.
13. In the end, I allow the Application dated 16.5.2023 in the following terms:-
  1. I hereby set aside the orders of 9.7.2015.
  2. The Grant of Letters of Administration Intestate issued on 26.5.1995 is reinstated.
  3. The Applicant shall apply for Confirmation of the Grant within 30 days of the date of this Ruling otherwise this file shall be automatically closed and be taken back to the National archives
  4. There shall be no order as to costs.

**DATED, DELIVERED AND SIGNED AT KISII THIS 18<sup>TH</sup> DAY OF DECEMBER 2023.**

**TERESA ODERA**

**JUDGE**

In the presence of:

Ms. Jannes Kemunto Abera - the Applicant

