



In re Estate of William Moseti & Maroa Mwita (Deceased) (Succession Cause 586 of 2014) [2023] KEHC 26482 (KLR) (18 December 2023) (Ruling)

Neutral citation: [2023] KEHC 26482 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
SUCCESSION CAUSE 586 OF 2014
RPV WENDOH, J
DECEMBER 18, 2023
IN THE MATTER OF THE ESTATE OF WILLIAM MOSETI AND MAROA
MWITA(DECEASED)
AND
IN THE MATTER OF AN APPLICATION FOR REINSTATEMENT OF A
CAUSE BY**

**SIMON MWITA MOSETI.....1ST
PETITIONER/APPLICANT
DAVID KERIOBA MARWA.....2ND
PETITIONER/APPLICANT**

**IN THE MATTER OF
SIMON MWITA MOSETI 1ST PETITIONER
DAVID KERIOBA MARWA 2ND PETITIONER**

RULING

1.
 - a. That this court be pleased to set aside the orders issued on 10/3/2020 revoking the grant of letters of administration intestate dated 6/6/2017 and subsequently reinstate the same for confirmation of grant;
 - b. That upon granting prayer 1 above, the petitioners/applicants be at liberty to file summons for confirmation of grant within 30 days;
 - c. Costs be in the cause.



2. The application is based on grounds listed on its face and the supporting affidavit of Simon Mwita Moseti and David Kerioba Marwa, the applicants herein. The applicants jointly deposed that this cause was filed in the year 2014 and grant of letters of administration intestate were issued on 6/6/2017; that this cause was dismissed for want of prosecution on 10/3/2020 and the letters of administration intestate were revoked; that some of the beneficiaries of the estate of the deceased were not willing to contribute to the survey fee hence causing delay in confirming the grant; that the failure to apply for confirmation of the grant was not intentional; that they were not served with the notices to show cause dated 3/1/2019 and 20/12/2019; that they learnt of the dismissal on 12/6/2023.
3. The applicants further deposed that they are willing to prosecute this succession cause on a priority basis and they asked this court to reinstate this cause and they be allowed to file summons for confirmation of grant.
4. I have carefully considered the proceedings in this cause. This court heard two applications via viva voce evidence. The first application for summons for confirmation is dated 26/10/2015. The second application for revocation/review of grant is dated 23/10/2015. After considering the testimonies and evidence on record, this court delivered its judgement on 6/7/2017. Among the orders which were issued read in part: -
The subsequent Grant is hereby confirmed...”
5. The notices to show cause dated 3/1/2019 and 20/12/2019 on why this cause should not be dismissed for not applying for confirmation of grant for over one year were issued in error. There was nothing to be dismissed since the cause had already been dealt with and the letters of administration intestate were confirmed in the names of Simon Mwita Moseti and David Kerioba Marwa on 6/6/2017. All the administrators are now required to do is to prepare a certificate of confirmation of grant and comply with the orders issued on 6/6/2017 on how the estate of the deceased should be subdivided.
6. The instant application dated 7/9/2023 is not necessary. The orders being sought cannot be granted. This court extends its apologies to the parties for the oversight and error on the part of the registry staff for issuing the notices to show cause erroneously. As matters stand, the grant was already confirmed in the names of the applicants and the parties are advised so.
7. Having found that the notices to show cause dated 3/1/2019 and 20/12/2019 were issued in error, it is only proper that this court moves suo moto and set aside the orders dated 10/3/2020 dismissing this cause.
8. The In charge of the High Court Registry is hereby directed to prepare a Certificate of Confirmation of Grant as per the orders on the distribution of the estate issued in the judgement of 6/6/2017.

It is ordered.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 18TH DAY OF DECEMBER, 2023

R. WENDOH

JUDGE

Ruling delivered in the presence of;

Present in person the Applicants.

EMMA & PHELIX COURT ASSISTANTS.

