



REPUBLIC OF KENYA



**In re Estate of Harrison Guto Mbeche (Deceased) (Succession Cause
46 of 2015) [2022] KEHC 656 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 656 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
SUCCESSION CAUSE 46 OF 2015
RPV WENDOH, J
JUNE 23, 2022**

**IN THE MATTER OF THE ESTATE OF HARRISON GUTO MBECHHE (DECEASED)
AND
IN THE MATTER OF APPLICATION OF LETTERS OF ADMINISTRATION
BY
ISAAC ODHIAMBO GUTO.....PETITIONER**

RULING

1. This cause relates to the estate of Harrison Guto Mbeche (Deceased) who died intestate on 25/7/2014. This ruling is in respect to the petitioner's application dated 15/3/2022.
2. The application was filed pursuant to Order 10 Rule 11 and Order 51 Rule 1 of the [Civil Procedure Rules](#) seeking the following orders: -
 1. Spent.
 2. That this court be pleased to vacate, vary and/or set aside the entire ex-parte order given in this matter and all its consequential effects, reinstate this matter and set it down for confirmation of grant.
 3. Costs of this application be in the cause.
 4. Any other relief.
3. The application is premised on the grounds on the face of it and the supporting affidavit of Isaac Odhiambo Guto, the petitioner. The petitioner's case is that a grant of letters of administration in the estate of the deceased was issued to him on 17/3/2016; that after the lapse of six months after gazettment, he instructed his Counsel Tom Mboya Advocates to file for the confirmation of grant. Unfortunately, his Counsel passed on in the year 2019 without seeking confirmation of grant on his behalf.



4. Further to the foregoing, the petitioner stated that the aforementioned events were beyond his control and now he is ready to file for confirmation of grant to enable him to distribute the estate.
5. I have considered the application and the supporting affidavit of the petitioner. On 12/11/2015 this cause came before Mrima J. The parties were not present and the matter was stood over pending issuance of grant and further proceedings. On 8/5/2018, the cause was placed before the court. Again, both parties were not present and the court proceeded to dismiss the matter for want of prosecution and revoked the grant. Therefore, it is not in dispute that the cause was dismissed for want of prosecution after the parties were indolent for close to three years.
6. Section 76 (d) (i) of the Law of Succession Act gives the court powers to revoke or annul a grant for want of prosecution within one year from the date the grant was issued or such long period as the court may allow. The court can do so when moved or on its own motion.
7. The court does have inherent powers under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules to entertain applications and make such orders as may be necessary to meet the ends of justice. The explanation given by the petitioner of the failure to file an application in time is plausible. The petitioner has also annexed a draft application for summons for confirmation of grant.
8. Accordingly, I allow the application for reinstatement dated 15/3/2022 and issue the following orders:
 1. The orders issued on 8/5/2018 be and are hereby set aside;
 2. This succession cause be and is hereby reinstated as prayed;
 3. That an application for Confirmation of Grant be filed forthwith within seven (7) days of this ruling in default the cause stands dismissed;
 4. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 23RD DAY OF JUNE, 2022

R. WENDOH

JUDGE

Ruling delivered in the presence of

Mr. Mboya for the Petitioner.

Evelyn Nyauke Court Assistant.

