



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mundi Mbole (Deceased) (Probate & Administration
353 of 2017) [2022] KEHC 10555 (KLR) (21 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10555 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
PROBATE & ADMINISTRATION 353 OF 2017
GMA DULU, J
JUNE 21, 2022
FORMERLY MACHAKOS P & A NO. 672 OF 2019
IN THE MATTER OF THE ESTATE MUNDI MBOLE (DECEASED)**

BETWEEN

BONIFACE MUNYAO MUINDE CITOR

AND

MUTINDA MUINDI 1ST CITEE

KIMATU MUINDI 2ND CITEE

MAWEU MUINDI 3RD CITEE

RULING

1. On the 7th June 2018, this court (C. Kariuki J) dismissed this succession matter for want of prosecution.
2. Thereafter, on 20th September 2021, the three applicants filed the present application dated 15th September 2021 with the following two prayers –
 1. The dismissal orders made on 07/06/2018 be set aside and this matter be reinstated.
 2. Costs of the application be provided for.
3. The application was filed with a supporting affidavit sworn by one of the citees, Mutinda Muindi on 15/09/2021, in which it was deponed that after a ruling was delivered in the same matter in Machakos on 25/07/2016, several efforts made to trace the file were futile, until the counsel on record discovered that the matter had been dismissed by the Makueni court.



4. The application was opposed through a replying affidavit sworn by Boniface Muinde Munyao on 12th November 2021, in which it was deponed that if the applicant wants the case to be reinstated, they were required to show a good reason which they had failed to do.
5. In response to the replying affidavit, the applicant filed a supplementary affidavit sworn on 17th November 2021 stating that the replying affidavit was based on falsehoods.
6. The application was canvassed through filing of written submissions. In this regard, I have perused and considered the submissions filed by Paul Kisongoa & company for the applicants, and the submissions filed by Boniface Munyao Muinde (citor) in person.
7. From the record, the dismissal of the matter herein was not done on merits, but for want of prosecution. It was an action taken by the court suo motu. Such action by the court is grounded on its jurisdiction under the Law of Succession Act (Cap.160), and especially section 47 which provides as follows –
 47. The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decree and under such orders herein as may be expedient.
8. In this matter, the citation proceedings were determined in 2016, and in 2021 about six years down the line, no progress had been recorded in the matter. Thus, using the one (1) year principle under section 73 of the Law of Succession Act applicable, the court closed the file by dismissing the pending matter.
9. I note that on 12th August 2016, J. M. Tamata & company advocates filed a Notice to Appeal, from the initial decision of this court in the citation proceedings. However, no appeal has so far been shown to have been filed.
10. In my view, therefore, the applicants (citees) were required to proceed and pursue obtaining of letter of administration, which they have not done to date and the matter was dismissed because it could not remain dormant indefinitely.
11. Having said so, in my view, section 76 of the Law of Succession Act, confers on this court jurisdiction to set aside its earlier dismissal orders for want of prosecution, in view of the wide latitude conferred on this court under the section. I will thus set aside the dismissal orders herein. However, the court's decision to set aside the exparte orders herein, can only be granted on condition that the applicants (citees) obtain letters of administration without delay.
12. I thus allow the application on the following terms:-
 - i. I set aside the dismissal orders of this court issued on 07/06/2018 and reinstate the matter.
 - ii. The applicants will however ensure that they obtain letters of administration herein by 21st June 2023 otherwise the setting aside herein, of the dismissal orders of this court in (i) above, will cease to have effect and the dismissal orders will automatically activate and the matter stand dismissed on 21/06/2023.
 - iii. Parties will bear their respective costs of this application.

DATED SIGNED & DELIVERED, THIS 21ST DAY OF JUNE 2022, IN OPEN COURT AT MAKUENI.

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GEORGE DULU



JUDGE

