



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**SUCCESSION CAUSE NO 165 OF 2008**

**IN THE MATTER OF THE ESTATE OF OMWEGA AYIECHA (DECEASED)**

**FRANCIS AYIECHA..... APPLICANT**

**VERSUS**

**RICHARD ONAMI OMWEGA.....1<sup>ST</sup> PETITIONER/RESPONDENT**

**JOHN MIRUKA OMWEGA.....2<sup>ND</sup> PETITIONER/RESPONDENT**

**RULING**

1. This cause concerns the estate of Omwega Ayiecha, who died on 28<sup>th</sup> April 1995. The application for the grant of representation of his estate was filed by Richard Onami Omwega and John Miruka Omwega. A grant was thereafter issued on 17<sup>th</sup> March 2009 to the respondents. However, the administrators failed to take any further steps towards prosecuting the matter. This court pursuant to **Section 73** of the **Law of Succession Act** issued the parties with notices but the parties failed to appear and thus the court directed that the grant issued on 17<sup>th</sup> March 2009 be revoked pursuant to section 76 (d) (i) of the Law of Succession Act.

2. This instant application, a chamber summons, filed by the applicant is brought under **Article 159** of the **Constitution**, **Section 45** of the **Law of Succession Act**, **Rule 44 and 73** of the **Probate and Administration Rules**, seeking the following orders:

*1) The Honourable Court be pleased to set aside the order made on 8<sup>th</sup> July 2015 revoking the grant issued herein on the 17<sup>th</sup> day of March 2009.*

*2) Upon grant of prayer 1 hereinabove being granted, this Honourable Court be pleased to reinstate the succession cause herein for hearing and final disposal.*

*3) The Honourable court be pleased to make an order appointing Francis Ayiecha as the Administrator of the estate of OmwengaAyiecha (deceased) in the place of Richard Onami and John MirukaOmwenga.*

*4) Cost of this application be in the cause.*

3. The application was supported by an affidavit of **Francis Ayiecha** dated 10<sup>th</sup> May 2021.

4. According to the applicant the grant issued in respect to the deceased estate was revoked and the matter marked closed. He now seeks to prosecute the petition for grant of letters of administration and seeks to be appointed as administrator in place of the respondents. He advanced that he was not aware of the existence of the suit at the time it was instituted.

5. The respondent opposed the application and filed its replying affidavit dated 21<sup>st</sup> July 2021 before this court.

6. However before the application was set down for hearing, prayers 1 and 2 of the application was allowed following the consent by the parties.

7. The prayers targeted by this ruling are prayers 3 and 4 namely;

*3) The Honourable court be pleased to make an order appointing Francis Ayiecha as the Administrator of the estate of OmwengaAyiecha (deceased) in the place of Richard Onami and John MirukaOmwenga.*

4) *Cost of this application be in the cause.*

8. A cursory look at the remaining prayers would indicate that upon the consent entered allowing prayers 1 and 2, the applicant needed and ought to have amended the Chamber Summons and the grounds in support for the simple reason that the allowing of prayer 1 and 2 completely changed the substratum of the application
9. The application had been drawn when the circumstances were different. The grant herein had been revoked *suo moto* by the court for want of action in the matter for over one year.
10. The consent entered by the parties on 8<sup>th</sup> July 2021 effectively reinstated the revoked grant and put the erstwhile administrators back as administrators.
11. Upon such reinstatement, prayer 3 of the application as drawn is not procedurally sustainable. If the applicant was desirous of replacing the current administrators and be appointed the administrator, then an application for revocation of the grant of letters of administration issued to the current administrators would be necessary.
12. It is worthy of note that even during the period the grant had been revoked by the court, there exists no procedure known in law empowering the court to appoint the applicant an administrator through the manner he has approached the court.
13. The effect of revocation of the grant would in effect require any person desirous of being an administrator to petition the court afresh and have the matter gazette so that any other person interested in the estate may object or acquiesce to such appointment as the case may be.
14. I note this is an old matter and it is in the best interests of the estate herein and the beneficiaries that it progresses to the next level. I will allow a window for the applicant to consider whether he intends to apply for revocation of the grant and file such an application within the next 30 days.
15. In default of such an application, the administrators are to take out a summons for confirmation of the grant herein within 60 days hereof and serve all beneficiaries including the applicant.
16. The application herein is dismissed. Each party to bear their own costs.

**DATED, SIGNED AND DELIVERED AT KISII THIS 23RD DAY OF SEPTEMBER, 2021.**

**A. K. NDUNG'U**

**JUDGE**