



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 186 OF 2004**

**IN THE MATTER OF THE ESTATE OF FRANCIS KALIKI (DECEASED)**

**AND**

**MARY RUNYANYI OCHIENG.....OBJECTOR/APPLICANT**

**VERSUS**

**PRISCILA VUGUTA KAMALIKI.....PETITIONER/RESPONDENT**

**RULING**

1. The objector/applicant has filed an application dated 30<sup>th</sup> April, 2019 seeking for orders:-

*(1) - spent*

*(2) That the honourable court be pleased to extend the time within which the objector/applicant ought to have prosecuted her notice of motion dated 3<sup>rd</sup> December, 2005, seeking orders for revocation of the grant of letters of administration issued to the petitioner/respondent on 12<sup>th</sup> July, 2003 in terms of the orders of Hon. Lady Justice Ruth Sitati on 21<sup>st</sup> January, 2016.*

*(3) That the initial ninety (90) days period within which the said application of 3<sup>rd</sup> December, 2003 ought to have been prosecuted in terms of the court's ruling of 21<sup>st</sup> January, 2016 be extended upon terms which the honourable court may be pleased to.*

2. The application was premised on the grounds on the face of the application and supported by the affidavit of the applicant sworn on 30/4/2019.

3. The application was opposed by the petitioner/respondent vide her replying affidavit sworn on 27<sup>th</sup> June, 2019.

4. The application came up for hearing on 14/10/2019. The advocates for the applicant, Thomas N. Maosa, did not turn up to prosecute the application. The advocate for the respondent Mr. Mukele thereupon asked the court to dismiss the application on the grounds that the hearing date had been taken by the advocate for the objector/applicant and yet he had failed to turn up in court to prosecute the application.

5. On the 21/1/2016 this court while presided over by Sitati J. made orders that the applicant set down the objection for full hearing within 90 days failing which the objection stood dismissed with costs to the petitioner/respondent. The applicant did not comply with the orders of the court and the objection stood dismissed at the expiry of the 90 days. The instant application seeks to extend the granted period of 90 days. The applicant says that she had no knowledge of the directions given by the court vide the ruling dated 21/1/2016 as her then advocate Mr. Kidiavai did not communicate to her on the same.

6. Neither the applicant nor her advocate turned up to prosecute the application dated 30/4/2019. The said application was filed after a period of more than 3 years after the delivery of the ruling dated 21/1/2016. In between the applicant had filed an application dated 15/2/2019. If her lawyer did not inform her of the directions of the court given on 21/1/2016, the applicant has not stated when she came to learn of the said orders. The applicant is not candid to the court. There was thereby unexplained inordinate delay in the filing of the application. This coupled with the fact that the appellant did not turn up to prosecute her application, the same is dismissed with costs to the petitioner/respondent.

**Delivered, dated and signed in open court at Kakamega this 29<sup>th</sup> day of January, 2020.**

**J. NJAGI**

**JUDGE**

In the presence of:

No appearance for objector/applicant

Mr. Mukele for petitioner/respondent

Objector/applicant - absent

Petitioner/respondent - present

Court Assistant - Polycap

30 days right of appeal.