

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

SUCCESSION CAUSE NO. 32 OF 2016

**IN THE MATTER OF THE ESTATE OF: JECONIA OPAR ADIEMA alias OPAR ADIMA –
DECEASED**

PENINA AKINYI OPARPETITIONER/RESPONDENT

VERSUS

HEZRON OKETCH OPAR..... OBJECTOR/APPLICANT

RULING

1. The Applicant herein, **HEZRON OKETCH OPAR**, filed a Summons for Revocation dated 04/02/2016 on 12/02/2016. The said application came up for directions on 09/03/2016 but since there was no evidence of service the same was adjourned to 05/04/2016 and service on the parties was ordered.
2. Come 05/04/2016 despite adequate notice on the parties' Counsels having been given there was no appearance and the Summons dated 04/02/2016 was accordingly dismissed.
3. Two months later, that is on 02/06/2016, the Applicant filed the Summons evenly dated 02/06/2016 seeking to set aside the dismissal order made on 05/04/2016. The Applicant's principal reason was that according to the Hearing Notice served upon **Mr. J. O. Soire** Counsel, the application dated 04/02/2016 was coming up for directions on 06/04/2016 and not 05/04/2016 and hence the dismissal was not justified.
4. I have seen the Hearing Notice annexed in the Applicant's Supporting Affidavit sworn on 02/06/2016 and marked as "HOO-1" which shows that the date fixed for directions was 06/04/2016 instead. I have equally had an opportunity to carefully peruse the Court file and have come across the Court's copy of the very Hearing Notice. The one in the Court record is clear that directions were to be taken on 05/04/16 and not on 06/04/2016 as alleged by the Applicant.
5. A closer look at the Hearing Notice annexed to the application under consideration reveals that the same was clearly altered so as to have a different but desired and untrue position; that directions were coming up on 06/04/2016 instead of 05/04/2016. It is visibly clear that the date 5th was altered to read 06th.
6. According to the Hearing Notice in the Court record the same was served upon J. O. Soire Counsel himself on 01/04/2016 and it was duly signed in acknowledgment of receipt. As to what happened thereafter so as to change the date from 5th to 6th April 2016, it is only Mr. J. O. Soire Counsel who can render an explanation. That being the case, the application dated 02/06/2016 is hence based on untrue allegations which borders not only on uncalled for unethical conduct but was equally calculated to portray that the Court as a whole was insensitive to the parties in unilaterally dealing with a matter on a day other than the one scheduled and so without appropriate notice to parties. This Court wonders why Counsel could not simply have come clean and explain what exactly befell him on receipt of the hearing notice since it is well within this Court's knowledge that genuine mistakes happen every single day in life.
7. Courts are called upon to dispense justice and in doing so the parties and their Counsels play a very crucial role towards the attainment of that main objective. Counsels are Officers of this Court and it is expected of them to conduct themselves in a manner befitting that professional calling. That calls for a

Counsel to be truthful even when the facts and circumstances in a matter are not favourable. It is least expected of a Counsel to act otherwise like in this instant case.

8. This Court is therefore called upon by duty to guard not only the integrity of Court files but also the integrity of the institution of Judiciary as a whole. It therefore means that unbecoming conducts like the one depicted by the Applicant herein should not be allowed to thrive. This Court therefore takes a very great exception to such a conduct and indeed frowns at it. If such conducts are allowed to thrive in our Courts then the public will sooner or later totally lose faith in the Judiciary.

9. I am aware that Courts are constitutionally-called to dispense justice without regard to technicalities. That is to say Courts ought to endeavour to discharge substantive justice as opposed to procedural justice. However that calling under **Article 159** of the **Constitution** equally calls for the parties and their Counsels to conduct themselves within the acceptable and expected parameters. What transpired in this case surely falls short of that expectation. I also note that the Applicant joined the band wagon of falsity by swearing the Supporting Affidavit hence he cannot take refuge in the cover that the issue complained of was solely within the ambit of his Counsel.

10. This Court believes that it has said enough. The upshot is therefore that this Court is constrained to decline the application dated 02/06/2016. The same is hereby dismissed with no orders as to costs.

DELIVERED, DATED and SIGNED at MIGORI this 31st day of January 2017.

A. C. MRIMA

JUDGE