

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

MISC. APPLN (SUCCESSION CAUSE) NO. 28 OF 2015

(Formerly Kisii High Court Misc. No. 1 of 2013)

IN THE MATTER OF THE ESTATE OF GLADYS ODINGA ORINDA (DECEASED)

-BETWEEN-

EUNITA ANYANGO GEKO

ESTHER ATIENO MAUCHA.....OBJECTORS/APPLICANTS

-VERSUS-

PHILIP OBUNDU ORINDA.....RESPONDENT

RULING

1. On 03/05/2016 the Applicants' Summons for Revocation dated 15/01/2013 which this Court had fixed for hearing was dismissed for non-attendance on the part of the Counsel for the Applicants as well as the Applicants.
2. The Applicants then filed the Summons dated 20/05/2016 seeking to set aside the orders made on 03/05/2016 on the main ground of non-service on the Applicants' Counsel. The application was supported by the two Affidavits sworn by Mr. Roch Odhiambo Counsel on 20/05/2016 and 08/08/2016 respectively.
3. The application was opposed through the Affidavit of the Respondent sworn on 02/06/2016.
4. The application was heard by way of oral submissions where Counsels expounded on their respective rival positions.
5. I have carefully considered the application on the background of the matter being a succession one where various interests are at stake. Looking at the hearing notice which was issued by this Court and was served through the Court's Process Server alongside the contents of all the affidavits on record and the submissions tendered, I have no doubt whatsoever that the dismissal order made on 03/05/2016 ought to be set-aside. This Court is convinced that any alleged service on the Applicants' firm of Advocates remain but highly doubtful. I therefore choose to hear the Summons for Revocation dated 15/01/2013 on its merit instead.
6. This Court now makes the following orders:
 - a) *The Summons dated 20/05/2016 is allowed to the extent that the proceedings of 03/05/2016 are hereby set-aside;*
 - b) *The Summons for Revocation dated 15/01/2013 is hereby reinstated and since directions on its hearing had been taken, parties shall fix the same for hearing before Court today;*
 - c) *Costs of the application to abide the outcome of the Summons for Revocation dated 15/01/2013.*

DELIVERED, DATED and SIGNED at MIGORI this 28th day of February 2017

A.C. MRIMA

JUDGE