



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.168 OF 2005**

**IN THE MATTER OF THE ESTATE OF DOMINIC MUINDI MUTHAMA (DECEASED)**

**LOIS NDUKU MUINDI.....1<sup>ST</sup> PETITIONER**

**LUCAS MUTHAMA MUINDI (DECEASED) .....2<sup>ND</sup> PETITIONER**

**RULING OF THE COURT**

**1. The Application**

The 1<sup>st</sup> Petitioner/Applicant has filed an Application dated 28/09/2016 pursuant to Section 76 of the law of succession act and seeks the following reliefs namely:

- (1) THAT this Honourable Court be pleased to set aside the order made on 01/09/2016 revoking the Petitioner's Succession Cause herein for failure to apply for issuance of the grant for letters of administration within one (1) year.**
- (2) THAT upon grant of prayer 1 hereinabove this Honourable court be pleased to allow the Petitioner to prosecute the cause herein to conclusion.**
- (3) THAT the costs be in the cause.**

The Application is supported by the affidavit of the 1<sup>st</sup> Petitioner/Applicant and the following grounds.

- (a) THAT the Petitioner's Succession Cause was revoked on the 01/09/2016 for failure to apply for issuance of the grant for letters of administration which notice to attend court, the Applicant has not received to date.**
- (b) THAT failure to take the necessary action to prosecute the succession cause was occasioned by a series of events commencing with the illness of the Applicant who was diagnosed with blood clot condition and has been undergoing therapeutic treatment at the Machakos Sub-County Hospital ever.**
- (c) THAT the Applicant's house was also burnt to ashes thereby occasioning financial constraints since she had to find means of recovery to enable her rebuilt her home again.**
- (d) THAT the Applicant's son one Lucas Muthama Muindi who incidentally is a Co-petitioner in this Cause also diagnosed with a cancerous tumor on his leg and passed on at the Machakos County Level 5 Hospital after undergoing treatment for two years.**

**(e) THAT the Applicant and the other beneficiaries are now eager to have the matter herein concluded.**

**(f) THAT it is the interest of justice that the orders sought be granted.**

2. During the hearing of the above Application, the Applicant indicated to this court that her co-administrator one Lucas Muthama Muindi has since passed on and that she needed to seek leave to substitute the 2<sup>nd</sup> Co-petitioner with another person. The Applicant was given time to do so and she later proposed the name of one of the beneficiaries namely: Tabitha Kanukwa Muindi to take up the place of the deceased co-petitioner. A copy of certificate of death in respect to the co-petitioner was annexed to the Applicant's Affidavit. The Applicant again simultaneously filed an Application for confirmation of grant dated 28/02/2017. I must point out that this court is reluctant to entertain the said Application for confirmation of a grant at this juncture since the first order of business is to reinstate the dismissed Petition and once same is reinstated a grant of probate shall then issue in the names of the applicant and the new Administrator. Thereafter the Administrators could then seek to apply to confirm the same. It is not possible for the Applicant at this stage to seek to confirm a grant which is yet to be authorized and issued by the court.

### **3. Determination:**

I have considered the Applicants Application dated 28/09/2016 seeking for reinstatement of a dismissed Petition and the subsequent one dated 28/02/2017 seeking for substitution of a deceased Co -Petitioner. The issue for determination by this court is whether the Applicant has rendered a plausible explanation for failure to prosecute this Petition that led to its being dismissed for want of prosecution. The other issue is whether sufficient reasons have been given for the substitution of a new Co-administrator.

4. As regards the first two issues, the Applicant has given a chronology of misfortunes that befell her and her family and which led to the delay in applying for grant of probate. I am satisfied by those reasons and more particularly the fact that the Applicant has been acting in person. I am also satisfied by the reasons that the Applicants Co-administrator, one Lucas Muthama Muindi has since passed on as per the copy of the certificate of death annexed to the Applicants Affidavit. There is need to substitute the deceased Co-administrator with one **TABITHA KANUKWA MUINDI** so that the Petitioners could then proceed to prosecute the Petition to conclusion.

### **5. Orders**

Accordingly, for the reasons set out above this court directs that the Petition herein be reinstated and processed towards the making of the Grant in accordance with the Probate and Administration Rules. The grant to be issued shall be in the names of **LOIS NDUKU MUINDI** and **TABITHA KANUKWA MUINDI**. Once the said grant is issued, the Petitioners to proceed to apply for confirmation of the same within six (6) months from the date of issue.

Costs shall be in the cause.

Dated, Signed and Delivered at Machakos this 23<sup>rd</sup> day of **March, 2017**.

**D. K. KEMEI**

**JUDGE**

In the presence of:

Lois Nduku – .....Applicant .....

C/A: Muoti.....