



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO.456 OF 2011

IN THE MATTER OF THE ESTATE OF JOSEPH NGUKU WAITA – (DECEASED)

MWIKALI NGUKU

MWANZIA NGUKU)PLAINTIFF/APPLICANTS

RULING OF THE COURT

1. This is an Application filed by the Applicant's pursuant to Rule 49 and 73 of the Probate and Administration rules seeking for the following prayers:

- 1. That this Honourable court be released to set aside the orders dated 16/07/2015 and reinstate the succession cause herein.***
- 2. That the Petitioners/Applicants be granted leave to file an Application for confirmation of grant within 21 days.***
- 3. That the costs be in the cause.***

The Application is supported by the annexed Affidavit of the 2nd Petitioner on his behalf and on behalf of the 1st Petitioner sworn on the 22/02/2017 and further on the following grounds.

- a. The grant issued herein on 2/12/2011 was revoked on 16/07/2015 and this matter marked as closed.***
- b. The failure to prosecute the matter was not intentional or deliberate.***
- c. After the grant was issued the beneficiaries were unable to agree on the mode of distribution of the estate of the deceased herein.***
- d. The beneficiaries have now agreed on how the estate is going to be distributed amongst them.***
- e. The Applicants were served with the notice to attend court on 16/07/2015 or any other day and show cause why the grant should not be revoked.***
- f. The beneficiaries are now in agreement on how to distribute the estate and the Applicants are willing to file and prosecute an application for confirmation of the said grant.***
- g. That it is in the interest of justice that the orders sought be granted.***

2. The Applicant's case is that a grant had been issued on the 2/12/2011 and that they had embarked on the process of distribution of the estate but however disagreements arose amongst the beneficiaries which caused the delay in filing for confirmation of grant. The Applicants have since resolved the disagreements with the beneficiaries and are now ready to file for the confirmation of grant. The Applicants further aver that the notice issued by this court regarding the need to appear in court to show cause why the cause should not be revoked for want of prosecution did not reach them. The Applicants finally maintain that the failure to prosecute the matter was not intentional or deliberate and now request the court to reinstate the cause.

3. I have considered the Applicant's application as well as the affidavit in support. It is not in dispute that this cause was dismissed on 16/07/2015 and grant revoked for want of prosecution. During the dismissal of the cause, the judiciary had embarked on an exercise dubbed "**justice @ last**" initiative in which several notices were issued directing litigants to ensure they prosecute their pending cases and further that they had been invited to show cause why their cases should not be dismissed for want of prosecution. However, it is noted that the notice issued to the Applicants did not specify the exact date they were required to attend court and show cause but merely provided a time line within which to do so. The Applicants have indicated that the reason for the delay was firstly that they did not receive the said notice and secondly that there had been some disagreements among the beneficiaries on how the estate is to be distributed. The Applicants aver that they have since settled on the disagreements and are ready to file for confirmation of the grant. I note that the Applicants have not annexed any draft of application for confirmation of a grant which includes a schedule of distribution of the estate as a sign that they are indeed ready. However, since they have indicated that they shall do so within 21 days, I have no reason to doubt them. I am satisfied by the reasons advanced by the Applicants which led to the delay in filing for confirmation of grant. It is common knowledge across the country for administrators of deceased's estate and beneficiaries to squabble and wrangle or disagree over the mode of distribution of the estate. In fact a majority of pending probate and administration causes before Kenyan courts are as a result of disagreements and disputes among administrators, beneficiaries and interested parties. I find the reasons for delay in filing for confirmation of grant excusable.

4. For the foregoing observations, the Applicant's Application dated 22/02/2017 has merit. The same is allowed as prayed. The Applicants are ordered to file for confirmation of grant within 21 days from the date hereof.

It is so ordered.

Dated, signed and delivered at Machakos this 25th day of APRIL, 2017.

D. K. KEMEI

JUDGE

In the presence of:-

Nyaata for Applicant.....

C/A: Kituva.....