



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 378 OF 2005**

**In the matter of the Estate of SAMSON KAGUNDA CHEGE (DECEASED)**

**RAHAB WANJA MICA.....APPLICANT**

**VERSUS**

**NAUMI WAMBUI KAGIRI.....RESPONDENT**

**RULING**

1. This is a ruling on the applicant/objector's application dated 9/12/2016 seeking for reinstatement of the application dated 16/11/2016 that was filed in court on 20/06/2008. the application is grounded on the affidavit of the objector/applicant which has no date it was sworn.
2. The grounds of the affidavit are that the counsel of the applicant was on route traveling from Nairobi and was delayed by circumstances beyond his control. When he entered court, he found the judge completing the writing of her ruling. The applicant has raised extraneous matters on how the advocate came into the court room and what he expected the court to do which I will not deal with.
3. In the replying affidavit, the respondent/petitioner opposes the application on grounds set out therein. Several paragraphs deal with allegations on how the respondent has in the past delayed this matter for she continues benefiting from the part of the estate she is using. The specific particulars and dates have been set out in the affidavit.
4. As for this application, the respondent states that she learned from the applicant that her advocate was to come late and a request was made to place the file aside till 10.00 a.m. The applicant's counsel says his vehicle broke down but he failed to inform the respondent's counsel. It is concluded that the applicant was playing the usual delaying tactics.
5. The background of this mater is borne by the record that the succession cause No. 46 of 1997 was commenced by the respondent and the grant confirmed in her favour on 2/02/1998. On 30/06/1998, the applicant stepped into the matter and later filed an application for revocation of grant dated 20/06/2008 that has not been prosecuted to date.
6. The reasons for the delay are shown in the record. The directions to hear the application were taken in 2009 which is eight (8) years ago. The matter has been mentioned in court several times and fixed for hearing mostly by the respondent. However, the hearings hardly take off due to the applicant non-preparedness.
7. It is on record that on 27/07/2016 the application dated 20/06/2008 was coming for hearing. The applicant applied for adjournment which was vehemently opposed by the respondent. The court was

constrained to grant adjournment and it was observed that the eight year old application has not been prosecuted for a long time. The adjournment was given as the last one on part of the applicant. The record confirms that the application for reasons unknown to this court but which the the respondent attributes to the fact that the applicant is benefiting from the estate.

8. As for the reasons given by the applicant for lateness of her advocate, I wish to state that the breaking down of a vehicle was not foreseen. However, the counsel ought to have kept in constant communication with the counsel for the respondent to inform the court that he would not make it at 10.00 a.m. as he had earlier indicated. In hat case, the court would have waited for another one hour or so as it dealt with other matters. However, no communication was received by the respondents counsel after the file was placed aside in the morning. The application was dismissed at around 11.15 a.m. for non-attendance.

9. due to the nature of the subject matter and considering the legal right of the applicant to be heard, I will accommodate the applicant and allow the application. The applicant must however bear in mind that the last adjournment had been given on 27/06/2017. This undue delay is expensive to the parties not consistent with the overriding objective which emphasizes on expeditious disposal of cases.

10. It is also an uneconomical in way of utilization of judicial time and resources.

11. I hereby order the application dated 20/06/2017 for revocation of grant be and is hereby reinstated with costs to the respondent.

12. The parties to fix the application for hearing within 14 days.

13. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 19TH DAY OF SEPTEMBER, 2017.**

**F. MUCHEMI**

**J U D G E**

**In the presence of:-**

**Mr. Nabutete for applicant**

**Ms. Ndorongo for respondent**