

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 324 OF 2011

IN THE MATTER OF THE ESTATE OF NDIVO MUTHIKE – DECEASED

RAEL MUNYIVA NDIVOPETITIONER/APPLICANT

RULING

I have considered the application dated 18.9.2015 which seeks an order for reinstatement of the Succession Cause herein for hearing. The court (Lucy Njuguna, J) on 16.7.2015 revoked the Grant herein issued on 30.5.2012 for want of prosecution pursuant to Section 76(d)(i) of the Law of Succession after notice under Section 73 of the Law of Succession Act was shown to have been given to the petitioner.

The petitioner states that notice to attend court on 16.7.2015 for purposes of showing cause was not served on her, and the delay in seeking confirmation of Grant has been explained by alleged failure to trace the file at the Registry.

I have noted that the notice given by the court given dated 23.6.2015 was sent to the Petitioner's Postal address as given in the petition. However, the notice did not state when the matter would come up in court. It only gave the period "between 6th July, 2015 to 25th July, 2015 for further necessary action/and or dismissal".

In these circumstances, I consider that the petitioner who by the application for reinstatement has demonstrated willingness to have the administration of the Estate finally concluded by a confirmation of Grant should be permitted to bring the Succession proceedings to an effective end. The interest of expeditious disposal of cases under Article 159 of the Constitution would rather have the Grant already issued processed to confirmation rather than have the entire process of Petition for a new grant restarted following the revocation of the Grant of 30.5.2012.

Accordingly, the summons for reinstatement of the Succession Cause dated 18.9.2015 is granted with costs in the cause.

DATED, SIGNED AND DELIVERED THIS 18TH DAY OF FEBRUARY, 2016.

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EDWARD M. MURIITHI

JUDGE

In the presence of: -

Mr. Kyalo for Petitioner/Applicant

Ms. Doreen – Court Assistant