



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 764 OF 2010
ESTATE OF JOEL KINGUU NGWILI (DECEASED)

TITUS MUTUKU KINGUU APPLICANT

RULING

APPLICATION

0. The applicant in person seeks reinstatement of the petition for Letters of Administration intestate filed herein on 29th October 2010, which was dismissed by the court upon the Petitioner's failure to attend court on the hearing of a Notice to show Cause why the petition should not be dismissed.
0. By an order of 17th July 2015, the court in a standard form order during backlog clearance week ordered as follows:

“Court: Notice having been issued to the parties herein under section 73 of the Law of Succession Act and in the absence of any steps taken by the parties to further prosecute this matter, the grant issued herein on the 29th October 2010 is hereby revoked under section 76 (d) (i) of the said Act and the matter is marked as closed.”

0. Notice dated 23rd June 2015 is shown to have been sent to the applicant at the address given in the petition in terms as follows:

“Take Notice that the above mentioned has been pending in court since its last action on 29/10/2010.

You are hereby notified to take the necessary steps to have the same fast tracked or else the same will be placed before the honourable judge between 6th July to 25th July 2015 for further necessary action and or dismissal.”

DETERMINATION

0. It would appear that the applicant did not get the notice of the court dated 23rd June 2015 as he depones that he learnt of the dismissal when he came to pay for the gazettelement of the petition in September 2015. The applicant states that he has now paid for the gazettelement of the Petition and seeks its reinstatement to hearing.
0. For an applicant in person the notice of 23rd June 2015 may not have been intelligible even if it was duly served because it did not give an exact date when the matter would come up in court but rather a period between ‘6th July to 25th July 2015’. While an advocate may have accessed the

court cause lists for the period at the court or on Judiciary website, an applicant in person could not be expected so to do, and therefore, notice of hearing as to the exact date when the matter would come up in court cannot be taken to have been duly served on the applicant.

0. Moreover, while the order of the court states that the grant is revoked under section 76 (d) (i) of the Law of Succession Act, there was in fact no grant issued in the matter on the 29th October 2010. What was issued on that date is a Notice of the filing of the petition which was to be published in the Kenya Gazette in accordance with the Probate and Administration Rules under the said Act. Accordingly, there was no Grant of Representation had been made in the Succession Cause capable of being revoked under section 76 (d) (i) of the Act as indicated in the court order of 17th July 2015.

ORDERS

0. Accordingly, for the reasons set out above, the court directs that the petition herein be reinstated and processed towards the making of the Grant in accordance with the Probate and Administration Rules. Costs in the Cause.

DATED AND DELIVERED THIS 16TH DAY OF MARCH 2016.

EDWARD M. MURIITHI

JUDGE

In the presence of: -

No appearance for the parties

Ms. Doreen -Court Assistant.