



**IN THE REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 148 OF 2005**

**IN THE MATTER OF THE ESTATE OF CHABARI NJRU KIRERU alias CHABARI NJERU -  
DECEASED**

**PATRICK MUCHANGU MATHENDU .....APPLICANT/PETITIONER**

**RULING**

**Reinstatement of grant**

[1] Two inextricable orders have been sought in the application dated 24<sup>th</sup> February, 2016: set aside the order made on 16<sup>th</sup> July, 2015; and reinstate the grant that was revoked thereto. The record shows that a grant of representation of the estate of the deceased was made to the Petitioner on 16<sup>th</sup> November, 2005. The cause then went to slumber for about ten (10) years. This inaction prompted the court to issue a Notice under Section 73 and 76 (d) (1) of the Laws of Succession Act. I have seen a copy of the said Notice. Then the court (Githinji J) on 16<sup>th</sup> July 2015 revoked the grant herein under Section 76 (d) (1) of the Law of Succession Act because the administrator, being the person to whom the grant had been made failed, after due notice and without reasonable cause to apply for confirmation of the said grant within one year from the date of thereof. Indeed, no steps had been taken to apply for confirmation at the time the grant herein was revoked. The judge was so satisfied and that fact cannot be doubted except I note that the advocate for the administrator Mr. Murango Mwenda has denied any service of the Notice under Section 73 of the Law of Succession Act. Is this a suitable case for setting aside the revocation order? This is the agenda I must discuss in the application dated 24<sup>th</sup> February, 2016.

[2] Other than allegation that Notice was not served, Murango Mwenda stated that he filed a summons for confirmation of the grant on 21<sup>st</sup> October, 2015. I have perused the court file and the said application is in the court file. But, one thing that is boggling my mind is why it took the Petitioner about ten years to apply for confirmation. Without doubt, that was a considerable period of time and the delay has not been explained with power and punch. That notwithstanding, is it still possible to do justice in this cause despite the long delay? There is some eagerness now from the Petitioner to move this cause forward and have the administration of the estate underway; could be because of the adverse act of revoking the grant or for legitimate purpose. Nonetheless, it is there. Secondly, the estate has remained un-administered for a long time now and any further delay may only dissipate the estate property. I am aware that the law of succession does not exist for insidious purposes but to ensure estate properties are preserved and administration of estate is done diligently and completely. That noble purpose of the law appeals to my sense of justice. And accordingly, and purely in the best interest of justice, I am persuaded to reconsider the decision of the court but on very strict terms and I hereby set aside the order of revocation made on 16<sup>th</sup> July 2015. I reinstate the grant of representation of the estate of the deceased to Patrick Muchangu Mathendu. I will also treat the application for confirmation filed on 21<sup>st</sup> October, 2015 to have been properly filed and it shall be heard on a date I will give in order to avoid any further delay. It is so ordered.

**Dated, Delivered and Signed in open court at Meru this 16<sup>th</sup> day of June, 2016.**

**F. GIKONYO**

**JUDGE**