



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. 688 OF 2008

IN THE MATTER OF THE ESTATE OF PETER MULWA NZWII – DECEASED

FLORENCE NDUKU MAUNDU

DAVID MUTHIWA MUTHEMBAPETITIONERS/RESPONDENTS

VERSUS

REDEMPTOR MWIKALI MUISYO

FREDRICK NZWII MBONDOOBJECTORS/APPLICANTS

RULING OF THE COURT

1. The Summons before the court is dated **8th June, 2016** seeking the following orders;
 - a. That this Court be pleased to set aside the orders issued on **13th July, 2015** whereby the grant issued on **17th February, 2009** was revoked and the matter was marked as closed and the court be pleased to reinstate the Succession Cause for hearing.
 - b. That costs of this summons be in the cause.

2. It is premised on the grounds that on **13th July, 2015**, the Petitioner's grant issued on 17th February, 2009 in respect of the Estate of the late **Peter Mulwa Nzwii** was revoked and the matter was marked as closed. The Objectors/Applicants are interested in the prosecution of the Petition as they are seeking to be appointed as administrators in the place of the Petitioners on grounds presented in both their protest and in the affidavit of the 2nd Petitioner. The failure to prosecute the matter was not intentional or deliberate. The Objectors and their Advocate on record were not served with the notice to attend court on the 13th July, 2015. The 1st Petitioner herein is since deceased and the 2nd Petitioner is no longer interested in prosecuting this petition. The proceedings herein have been pending typing of proceedings and the Objectors/Applicants have been and are keen to finalize these succession proceedings. The Applicant's case is that the orders made against the parties herein are highly prejudicial against them and other beneficiaries as they stand to suffer hardship if the succession proceedings are not determined on merits. The orders sought herein are necessary to finalize the succession proceedings of the estate of the late **Peter Mulwa Nzwii** and to vest the properties to the rightful beneficiaries, and it is in the interest of justice that the orders issued by the Court on **13th July, 2015** be set aside in order to finalize the succession proceedings. This application is necessary for the ends of justice to be met.

3. The application is not opposed.

4. The validity of the application only depends on whether or not the Notice to Show Cause was served upon the Petitioner. While I see a copy of the notice issued on **13th July, 2015**, there is no evidence that the same was served upon the Petitioner. It is a cardinal rule of justice that a party cannot be denied the right to be heard without notice.

5. On that ground alone the application is allowed and the cause herein reinstated. However, the Petitioner must take a positive action within forty five (45) days of the Ruling.

DATED, SIGNED AND DELIVERED THIS 27TH DAY OF OCTOBER, 2016

E.K.O. OGOLA

JUDGE

In the presence of;

Mr. Kairu holding brief for Mr. F.N. Mulwa for applicant

Court Assistant – Mr. Munyao