

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 718 OF 2007

IN THE MATTER OF THE ESTATE OF KARIUKI NGURE MAINA – (DECEASED)

RULING

1. The Summons for determination is dated 10th March 2011. It seeks reinstatement of a summons dated 15th March 2007 that was dismissed on 9th March 2009.
2. The applicant avers that the said application had been fixed on 9th February 2009 for mention on 11th March 2009 for directions. It was mistakenly fixed for mention on 11th February 2009 instead of 11th March 2009. When it came up on 11th February 2009 none of the parties attended court and the court stood it over to 9th March 2009 for mention. Notice was not given to the parties by the court of the mention stated for 9th March 2009. Predictably, the parties did not attend court on 9th March 2009 and the applications dismissed was for non-attendance.
3. The respondent swore an affidavit on 11th May 2011 in reply to the application. His position is that there has been inordinate delay in the bringing of the application for reinstatement. Dismissal was on 9th March 2009 yet the application for reinstatement did not come until 10th March 2011. He argues that the delay was not explained. The applicants have also been accused of failing to comply with earlier orders of the court.
4. I have perused the record. It reveals that the matter was before Rawal J. on 9th February 2009 for directions on the application dated 15th March 2007. Her Ladyship directed that the same be mentioned on 11th March 2009 before Onyancha J. For some reason, the matter appeared in the cause list for 11th February 2009, matter was before Onyancha J. The parties did not attend court. The court unilaterally fixed it for mention on 9th March 2009 and imposed court adjournment fees. On 9th March 2009 Onyancha J. dismissed the application for non-attendance.
5. I note that the order dismissing the application was made on 9th March 2009. Thereafter there was no activity with respect to the said application until 10th March 2011 when the instant application was filed in court and 16th June 2011 when a date was taken at the registry for its hearing on 26th September 2011.
6. The last time counsel attended court before the application dated 15th March 2007 was dismissed on 9th March 2009 was on 17th September 2008, when it was directed that the matter be mentioned on 17th November 2008 for further directions. On that 17th November 2008 counsel for the applicant did not attend court and the matter was stood over to 9th February 2009. On 9th February 2009, counsel for the applicant did not again attend court, and the matter was not stood over to 11th March 2009.
7. In view of what I have stated in paragraphs 5 and 6 above, I entertain doubts as to whether the applicants are entitled the discretion they are asking for. I agree with the respondent that there was inordinate delay in the making of the application for reinstatement. That delay has not been sufficiently explained.

8. The application dated 10th March 2011 is hereby dismissed. The respondent is entitled to and is hereby awarded costs of the said application.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF January, 2014.

W. MUSYOKA

JUDGE