

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.2297 OF 1997

IN THE MATTER OF THE ESTATE OF DISHON BORO (DECEASED)

MUNYUA DISHON BORO.....APPLICANT

VERSUS

MARY NDUTA DISHON.....1ST RESPONDENT

SIMON BORO WANJIKU.....2ND RESPONDENT

RULING

The Applicant has invoked the inherent jurisdiction of this court pursuant to **Rules 49 and 73 of the Probate and Administration Rules** seeking to have the summons for revocation of grant which was filed by the Respondents on 14th August 1997 be dismissed for want of prosecution. The Applicant further prayed that the estate of the deceased be distributed to the beneficiaries in accordance with the certificate of confirmation of grant. The application is supported by the supporting affidavit of the Applicant. In the said affidavit, the Applicant depones that the 1st Respondent Mary Nduta Dishon filed summons seeking to have the grant of letters of administration issued to him revoked. The application was filed on 3rd of November 1997. The Respondents were ordered to serve the Applicant by the court on 17th November 2004. Since then, the Respondents have made no effort either to serve the summons for revocation of grant or to fix the said summons for hearing before this court. The Applicant deponed that he had been prejudiced by the delay in the prosecution of the matter. He urged the court to dismiss the said summons for want of prosecution.

The Respondents were duly served. It emerged during the hearing of the application that the 1st Respondent Mary Nduta Dishon is now deceased. It appears that no one has taken letters of administration to administer her estate. Her immediate next of kin one John Mburu Kamau Dishon (her son) is also deceased. The 2nd Respondent told the court that the only beneficiaries alive to prosecute the application were Michael Mushikwa Mburu and Joshua Dishon. He urged the court to allow them to prosecute the case. Mr. Kinuthia for the Applicant reiterated the contents of the application and urged the court to allow the application.

This court has carefully considered the facts of this case. It was clear that the Respondents have not been keen to prosecute the summons for revocation of grant which was filed on 14th August 1997. Even though the 1st Respondent is now deceased, no effort has been made by any of her successors to substitute her as a party in these proceedings. Seventeen (17) years is a long time for any party to a suit to wait to be heard. In the present application, it is the Respondents who were indolent in prosecuting the said summons for revocation of grant. This court therefore finds merit with the Applicant's application as a result of which the summons for revocation filed in this court on 14th August 1997 is hereby dismissed for want of prosecution. There shall be no orders as to costs. It is so ordered.

DATED AT NAIROBI THIS 22ND DAY OF APRIL, 2014.

L. KIMARU

JUDGE