



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

Succession Cause No. 319 Of 1992

**IN THE MATTER OF THE ESTATE OF THE LATE JACOB ODHIAMBO ODINGA –  
DECEASED**

**BETWEEN**

**JOSEPH OKELO WANGOYA ..... PETITIONER/RESPONDENT**

**VERSUS**

**ABDALLA SHIKUKU OKELLO ..... OBJECTOR/APPLICANT**

**RULING**

In this Succession matter, Abdalla Shikuku Okello filed an application dated 7th September 2006. It was an application for revocation of grant. The said application was dismissed on 23rd February 2011.

The same applicant subsequently filed the present application dated 22<sup>nd</sup> August, 2011 seeking the reinstatement of the dismissed application. He filed a supporting affidavit to the effect that the petitioner's advocate's offices were in Mumias. That he had severally visited the office of Mr. Mwebi advocate for the petitioner and the clerk told him to go and fix a hearing date. Without his knowledge however, the said firm of advocates fixed the application for hearing. They never served him and filed a false affidavit of service sworn by Francis Omire that he had refused service.

The application is opposed. A replying affidavit sworn by the petitioner on 9th March, 2005 was filed. It was deponed that the applicant, who is the objector, is not stating the truth that service was not effected on him. That the applicant had never made attempts to fix his application for revocation of grant for hearing.

Both M/S Mwebi & Company advocates for the petitioner and M/S Nandwa & Company for the applicant filed written submissions. Mr. Nandwa for the applicant and Mr. Manyoni for the respondent who appeared on the hearing date, relied on the written submissions filed.

I have considered the application. There is no dispute that the application of the applicant for revocation of grant was dismissed on a technicality of non-attendance. Though the petitioner considers that this court does not have powers to deal with an application for reinstatement of an application, that cannot be true. The law of Succession Act (Cap. 160) is very clear on the powers of this court. Section 47 donates wide powers on this court, to make orders that serve the interests of justice. It provides as follows -

***“47 – The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient. Provided that the High Court may for the purposes of this section be represented by Resident Magistrates appointed by the Chief Justice.”***

In addition to the above, Rule 73 of the Probate and Administration Rules also confers on this court powers to grant the orders sought herein, provided the same are consonant with the interest of justice.

Since the application was dismissed on a mere technicality of non attendance, in my view, it can be reinstated. Any party can fix the application for hearing provided that proper service is effected.

In the interest of justice, I allow the Notice of Motion dated 22nd August, 2011 and grant prayer 2 and 3 therein. Costs will be in the cause.

However, the applicant should ensure that within this year, 2014 all the surviving beneficiaries are served with the application for revocation of grant. The applicant should also ensure that the matter is listed for direction by the court to facilitate the hearing and determination of the said application dated 7th September 2006. Costs in the cause.

*Dated and delivered at Kakamega this 19<sup>th</sup> day of June, 2014*

**George Dulu**

**J U D G E**