

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Succession Cause 1157 of 1997

IN THE MATTER OF THE ESTATE OF PETER KARANJA KIONGO- (DECEASED)

RULING

The application dated 25th September 2012 seeks dismissal of two applications for revocation of grant dated 29th July 2008 and 27th May 2009 for want of prosecution. The application dated 25th September 2012 was served on the respondents – Lilian A. Kiongo and Esther W. Kiongo – but they did not respond to it, although they did attend court on 24th April 2013 when the same came up for hearing.

I have perused the record and noted that a total three revocation applications were filed by the respondents. The first is dated 29th July 2008 and was filed in court the same day. While this was still pending, another one was filed on 19th September 2008 dated 18th September 2008. The application dated 18th September 2008 was withdrawn on 27th May 2009 through notice to that effect to the court, and on the same day another revocation application of even date was filed.

After the application dated 27th May 2009 was filed nothing further happened in the matter until 24th August 2011, when a Motion was filed by the administrator for the dismissal of the pending revocation applications. This Motion was not heard as it was withdrawn on 8th November 2011. The application was replaced by a summons dated 25th September 2012 filed in court on 27th September 2012.

I have noted that all this while no effort was made by the respondents to have their two revocation applications disposed of. The two applications have never been listed for directions as no request was ever made by the respondents for the same, and therefore the two applications have never matured for hearing. No satisfactory explanation was offered by the respondents when they attended court on 24th April 2013 as to why they took no steps to have the applications heard. No explanation was also given as to why they found it necessary to fill two applications based on the same facts seeking to have the same grant revoked. The filing two similar applications smacks of abuse of court process. I interpret this to mean that the respondents merely intended to delay the administration process.

I find that no satisfactory explanation has been given for the delay in disposing of the two pending applications. The respondents have been indolent and there is want of prosecution of the said applications. A case has been made out for dismissal of the said applications for want of prosecution and I hereby dismiss them with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 16th DAY OF May, 2013.

W. Musyoka
Judge