



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MILIMANI**

**SUCCESSION CAUSE NO: 2407 OF 2005**

**IN THE MATTER OF THE ESTATE OF LUCY NUNGARI KABOGORO (DECEASED)**

**RULING**

The applicant administrator has invoked the inherent powers of the court as saved under Rule 73 of the Probate and Administration Rules. He would like the court to dismiss the application for revocation dated 16th August 2005 for want of prosecution. He would also like cautions registered against the title Ndumberi/Riabai/2041 removed.

The summons dated 29th October 2012 was served on the respondent on 5th December 2012. The respondent has replied to it by his affidavit dated 17th December 2012. He concedes delay in the prosecution of his application dated 16th April 2005, and blames it on his previous lawyer who died before the summons for revocation could be heard. He appointed his second lawyer, now on record, in 2008, but there was delay in getting the lower court file availed. He pleads that he took all the necessary steps to dispose of the application.

The record shows that the summons of revocation dated 16th August 2005 was filed in court on 30th August 2005. On 24th September 2008 a date was fixed at the registry for the taking of directions on 5th November 2008. Directions were not taken on 5th November 2009 as the other side had not been served. The matter next came up on 4th February 2009, but again directions were not given as service had not been effected. On 2nd March 2009, directions could not be taken as counsel deputed by the respondent's advocates did not have clear instructions. Directions on the revocation application have never been taken as nothing concrete happened thereafter until the instant application dated 29th October 2012 was filed in court on 29th October 2012.

The respondent has not advanced any good reasons why the application dated 16th August 2005 has not been disposed of to date. More importantly directions on the mode of disposal of the said application have never been taken. The application dated 16th August 2005 was last in court on 2nd March 2009. A date was fixed on 9th May 2010 for hearing on 16th November 2010 but the hearing date was taken out on 20th October 2010 because the parties did not attend the call over. In any event it was premature to fix the matter for hearing before directions under Rule 44 of the Probate and Administration Rules had been taken. There is clear evidence of lack of commitment to dispose of the matter on the part of the respondent. I am satisfied that there has been want of prosecution of the application dated 16th August 2005. The respondent cannot hold the applicant at ransom since 2005.

I find merit in the application dated 29th October 2012. I will allow it in its entirety. Costs shall be to the applicant.

**DATED, SIGNED and DELIVERED AT NAIROBI THIS 27th DAY OF June 2013.**

**W.M. Musyoka**

**JUDGE**