



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Edward Mwangoma Kadoti (Deceased) (Succession Cause  
196 of 2013) [2012] KEHC 5404 (KLR) (14 April 2012) (Ruling)**

Neutral citation: [2012] KEHC 5404 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 196 OF 2013**

**JN ONYIEGO, J**

**APRIL 14, 2012**

**IN THE MATTER OF THE ESTATE OF EDWARD MWANGOMA KADOTI (DECEASED)**

**RULING**

1. A grant of letters of administration intestate in respect of the deceased's estate was made and issued on 26<sup>th</sup> May, 2017. Summons for confirmation of grant dated 15<sup>th</sup> January, 2018 was filed on 31<sup>st</sup> January, 2019. However, no action was taken to prosecute the application for over a period of one year.
2. Consequently, a notice to show cause why the suit could not be dismissed for want of prosecution was issued through the firm of Birir and Company Advocates appearing for the applicant.
3. The petitioner/applicant having failed to appear or turn up on 7<sup>th</sup> September, 2018 to show cause as directed, the court dismissed the suit for want of prosecution thus effectively revoking the grant issued on 26<sup>th</sup> May 2017.
4. Subsequently, the applicant moved this court under a Notice of Motion dated 22<sup>nd</sup> February, 2020 and filed the same date seeking the court to set aside the orders made on 7<sup>th</sup> September, 2018 revoking the grant dated 26<sup>th</sup> May, 2013. The applicant further prayed for orders that the grant be reinstated and the draft summons for revocation be deemed as duly filed.
5. The application is premised upon grounds set out on the face of it and averments contained in the affidavit sworn on 22<sup>nd</sup> February, 2012 by Kipkurui Nge'no Birir counsel appearing for the applicant. It was averred that the applicants had on several occasions fixed the application for confirmation for hearing but it could not be heard.
6. He further stated that the notice to dismiss the suit was not served upon the applicants nor his counsel and that the one-year period since the time the file was last acted upon had not lapsed hence the dismissal orders were erroneously made. He averred that the applicants are willing and ready to administer the estate to conclusion if the grant is reinstated and confirmed.



7. During the hearing, M/s Omido holding brief for Mr Birir counsel for the applicant literally reiterated the averments contained in the affidavit in support of the application. I have considered the application herein, affidavit in support and oral submission by counsel for the applicant.
8. The applicants' main contention is that the grant herein was revoked and the suit dismissed for want of prosecution before the expiry of the recommended statutory time. Secondly, that the notice to show cause was not served upon the applicants nor their counsel.
9. A perusal of the court record reveals that the file was last acted upon on 9<sup>th</sup> April, 2018, when the court directed parties to take convenient date in the registry. However, on 7<sup>th</sup> September, 2018 the court dismissed the suit for want of prosecution as nobody turned up to show cause. Obviously, one year had not lapsed since 9<sup>th</sup> April, 2018 when the last attempt to confirm the grant was made. I do agree with the applicant that the notice to show cause was prematurely issued as time had not crystalized for dismissal.
10. Regarding failure to serve the notice upon the applicants, there is nothing on record to show that the applicants or their counsel was served. In other words, the court registry cannot prove that service upon the applicants or their counsel was effected appropriately. To that extent, the applicant is deemed to have been condemned unheard thus violating his fundamental right to a fair hearing.
11. In view of the grounds adduced by the applicants in support of the reinstatement of the suit, I am satisfied that the application is merited and same is allowed as prayed. Accordingly, the grant made on 26<sup>th</sup> May, 2017 is reinstated and the application for confirmation of grant dated 15<sup>th</sup> January, 2018 fixed for hearing on 26<sup>th</sup> April, 2012.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 14<sup>TH</sup> DAY OF APRIL, 2012.**

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**J. N. ONYIEGO**

**JUDGE**

