



In re Estate of the Late James Kibiego Tiren (Deceased) (Succession Cause 100 of 2022) [2025] KEHC 10202 (KLR) (15 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10202 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 100 OF 2022
RN NYAKUNDI, J
JULY 15, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE JAMES KIBIEGO TIREN (DECEASED)

BETWEEN

BABLEY CHEBET KEBENEI PETITIONER

AND

LYDIA BIRIR 1ST OBJECTOR

LYDIA JEROTICH TIREN 2ND OBJECTOR

TONNY KIBET TIREN 3RD OBJECTOR

ROBBY TIREN 4TH OBJECTOR

RULING

1. What is pending before me for determination is a Notice of Motion Application dated 28th day of May 2025 in which the Applicant is seeking the following orders:
 - a. Spent
 - b. The court order made on the 21st January 2025 dismissing the Objectors/Applicants' case for want of prosecution set aside
 - c. The honorable court be pleased to reinstate the case and set down the case for full hearing
 - d. Cost of this application be provided for
2. The Application is based on the following grounds among others: -
 - a. That the Objectors/Applicants' case was dismissed on 21st January 2025 for want of prosecution



- b. That the estate of the deceased herein is on the verge of being wasted since the honorable court has not pronounced itself on how the estate should be distributed among the beneficiaries.
 - c. That the objection case raises serious and weighty triable issues of both fact and law and ought to be heard on merit
 - d. That the prevailing legal norm leans towards trying this case on merit and not disposing it solely on technicalities
 - e. That non-prosecution of the case was occasioned by factors beyond the Applicants' control
 - f. That an order of skeleton file was made and the Objectors copies of proceedings
 - g. That the file should have been listed for directions
 - h. That it is in the interest of justice that the Applicant's case be reinstated
3. The Application is supported by the annexed affidavit sworn by Amos K. Songok who avers as follows:
1. That I am an advocate of the High Court of Kenya practicing in the name and style of Songok & Company Advocates in conduct over this matter on behalf of the Applicants' herein and thus competent and authorized to swear this affidavit
 2. That the court file relating to this case mysteriously disappeared from the registry necessitating a skeleton court file to be reconstructed. That the file was reconstructed but I was not served and/or informed of the date set by this honorable court
 3. That on the on 21st January 2025 when the matter was not coming up for case management conference, I did not attend court as I was not aware of the date
 4. That as a result of my absence the court dismisses this case for want of prosecution
 5. That my failure to attend court should not be visited upon the Applicants' and as such I pray that this honorable court reinstates this case and allow it to proceed to full hearing in order to provide for the distribution of the estate from being wasted
 6. That it is therefore in the interest of justice that the order dismissing the suit be set aside and the suit be reinstated for hearing as the Objectors/Applicants' are still interested in the case

Decision

4. What does "Dismissal for want of prosecution" Mean? "Dismissal for want of prosecution" is a phrase that is often used in civil cases where there has been no activity for a certain amount of time. This happen with breach of contract cases, property damage cases, and anything else where there is no clear next step in the process. When the court feels that there has been a lack of progress in the case, they may issue a dismissal for want of prosecution. This essentially means that the plaintiff (the person who initiated the suit) has done nothing move the case forward in a timely manner.
5. The law applicable is Order 12 Rule 7 of the CPR provides as follows: "Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just." The court in *Esther Wamaitha Njihia & 2 Others vs Safaricom Ltd* [2014] eKLR held inter alia on the matter of exercise of discretion to the effect discretion is free and the main concern of the courts is to do justice to the parties before it (see *Patel vs E.A Cargo handling Services Ltd*) the discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but is not designed to



assist a person who deliberately sought, whether by evasion or otherwise, to obstruct or delay the cause of justice.

6. In the civil procedure rules specifically Order 12 as read with Order 17;

Where a suit is wholly or partly dismissed, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action, but he may apply for an order to set the dismissal aside and, if he satisfies the court that there was sufficient cause for his nonappearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit.

7. The applicant in this case has deponed in his affidavit that the court file relating to this case mysteriously disappeared from the registry necessitating a skeleton court file to be reconstructed. (annexed herein and marked AKS-1 is a copy of a letter confirming whether the skeleton file had been reconstructed and seeking a date of status conference). He also went further to explain that on 21st January 2025 he was not aware of any scheduled or fixed date requiring his attendance. In the sense the threshold as to what constitutes sufficient cause as stated in the case of Bishop Jacinto Kibuuka v The Uganda Catholic Lawyers Society & 2 Others Miscellaneous Application No. 696 of 2018 where it was held that:

“.... sufficient cause” means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have “not acting diligently” or “remaining inactive.” However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whatever the court exercises discretion, it has to be exercised judiciously.”

8. As a consequence of this I hereby exercise discretion by reinstating the suit for it to be heard on the merits to answer the justiciable issues. To that extent the pre-trial conference be and is hereby scheduled on 21st of July 2025 to adjudicate on the making of the grant of letters of administration to the estate of James Kibiego Tiren.

9. It is so ordered.

DATED AND SIGNED AND PUBLISHED VIA CTS ELDORET THIS 15TH DAY OF JULY 2025

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R. NYAKUNDI

JUDGE

