



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of the Late Cheptoo Cheboswony (Deceased) (Succession Appeal 1 of 2020) [2025] KEHC 10201 (KLR) (15 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10201 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION APPEAL 1 OF 2020**

RN NYAKUNDI, J

JULY 15, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE CHEPTOO CHEBOSWONY
(DECEASED)**

IN THE MATTER OF

**EUNICE KIGEN CHEBOSWONY 1ST APPELLANT
WILSON KIPTOO CHEBOSWONY 2ND APPELLANT
GLADYS CHEBOSWONY 3RD APPELLANT
JEMUTAI CHEBOSWONY 4TH APPELLANT**

RULING

Coram: Justice R. Nyakundi

M/s Cheruiyot Kirui & co. Advocates

M/s. Limo R.K & co. Advocates

1. What is pending before me for determination are Chamber Summons dated 25th June 2025 in which the Applicants are seeking the following orders:
 - a. Spent
 - b. That this Honorable Court, be pleased to set aside, the dismissal orders, made on the 26th May, 2025 and that the suit herein be reinstated.
 - c. That cost of this application be in the cause.
2. The Application is premised on the following grounds;
 - a. That this matter came up for dismissal on 26/5/2025.



- b. That unfortunately, we were not served, with the notice for dismissal.
 - c. That the matter was active and was coming up for mention, before the Deputy Registrar High Court on 22/7/2025.
 - d. That the lower court file, went missing for a very long time and it is only recently, that the typing of proceedings was completed, after we had made several follow ups.
 - e. That the 1, 3 and 4th appellants, are the daughters of the estate, but were left out, in the distribution of the estate, of their father, resulting to this appeal.
 - f. That the daughters to the estate herein, shall suffer irreparable damage, untold injustice and hardship, if this application is not allowed.
 - g. That it is the applicant's humble prayer, that this matter be reinstated, in the best interest of justice.
 - h. That reinstating this suit, will cause undue prejudice, to the respondent
3. The Application is supported by the annexed affidavit sworn by Nathan Cheruiyot who avers as follows:
1. That I have been in conduct of this matter, on behalf of the appellants.
 2. That this matter came up for dismissal on 26/5/2025.
 3. That unfortunately, we were not served, with the notice for dismissal.
 4. That the matter was active and was coming up for mention, before the Deputy Registrar High Court on 22/7/2025.
 5. That the lower court file, went missing for a very long time and it is only recently, that the typing of the proceedings was completed.
 6. That the 1, 3 and 4th appellants, are the daughters of the estate, but were left out, in the distribution, of the estate of their father, resulting to this appeal.
 7. That the daughters to the estate herein, shall suffer irreparable damage, untold injustice and hardship, if this application is not allowed.
 8. That it is the applicant's humble prayer, that this matter be reinstated, in the best interest of justice.
 9. That all that is deponed herein, is true to the best of my Knowledge, information and belief.

Decision

4. The provisions governing exercise of discretion to reinstate a dismissed suit for want of prosecution include the following sections 1A, 1B, 3A and 80 of the [Civil Procedure Act](#), Order 12 Rule 7 of the [Civil Procedure Rules 2010](#), Rule 73 (1) of the [Probate and Administration Rules](#). The general principle includes:

“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 or she may apply for an order to set the dismissal aside, and, if he or she satisfies the court that there was sufficient cause for 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.”

5. The applicant has shown sufficient cause for this court to exercise discretion within the guideline of comparative jurisprudence 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.”

6. It is also true that the *Civil Procedure Act* under section 3 as read with 3A gives this court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. In this case, the ends of justice are to be met when the case is heard and determined on its merits because the administration of justice requires that the substance of all disputes should be investigated and the cases be decided in their merits; and that errors and lapses should not necessarily debar a litigant from pursuing his rights.

7. For those reasons the chamber summons dated 26th June 2025 be and is hereby granted in terms of the following orders:

- a. That this Honorable Court, be pleased to set aside, the dismissal orders, made on the 26th May, 2025 and that the suit herein be reinstated.
- b. That the suit be set down for hearing on the 4th of August 2025 on priority basis.
- c. The final status conference be held on 30th July 2025.
- d. The costs to abide the outcome of the suit.

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

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R. NYAKUNDI
JUDGE

