



REPUBLIC OF KENYA



In re Estate of Kassim Ramadhan Amarch (Deceased) (Succession Cause 177 of 1998) [2025] KEHC 13085 (KLR) (22 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13085 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 177 OF 1998
RN NYAKUNDI, J
SEPTEMBER 22, 2025
IN THE MATTER OF THE ESTATE OF THE LATE
KASSIM RAMADHAN AMARCH (DECEASED)**

**IN THE MATTER OF
CATHERINE MUHONJA KASSIM PETITIONER**

RULING

1. This is an application brought to court on 22nd September, 2025 for reinstatement and confirmation of grant seeking the following orders:
 - a. That: This suit be reinstated since it was dismissed on 12th June 2025 for want of prosecution
 - b. That I did not knew the next step after getting the Grant of letters of administration
 - c. That the certificate of confirmation of Grant issued on the 3rd March 1999 to Catherine Muhonja Kassim be confirmed
 - d. That the costs be in the casue
2. It is supported by an affidavit sworn by Catherine Muhonja Kassim which states as follows:
 - a. That I am female adult of sound mind and the petitioner/application herein, thus competent to swear this affidavit
 - b. That I was granted letters of administration on 3rd March 1999
 - c. That the same has not been confirmed
 - d. That I learnt the suit was dismissed for want of prosecution on 12th June 2015
 - e. That I now request this Hon. Court the same be reinstated and the said grant be confirmed
 - f. That the said parcel No Baringo/Kamelo/117 be confirmed



- g. That this application is made in good faith and in the interest of justice
- h. That the contents of this affidavit are true to the best of my knowledge information and belief

Decision

2. The court has wide discretion to set aside its own order to dismiss the suit for want of prosecution so long as the Applicant has shown sufficient cause. The import of discretion can be within the following principles in the cases of *Mbogo vs Shah* (1968) EA 93. *Kimani vs McConnell* (1966) EA 547. “ The main concern if the court is to do justice to the parties, and the court will not impose conditions on itself to fetter the wide discretion given to it by the rules. Where it is a regular judgement, the court will not usually set aside the judgement unless it is satisfied that there is a defense on the merits. However, a defense on merits does not mean a defence that must succeed. It means a triable issue, that is an issue which raises a prima facie defence and which should go to trial for adjudication.

The import of Order 17 Rule 2 of the *Civil Procedure Rules* provides as follows:

- i. In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.
 - ii. If cause is shown to the satisfaction of the court, it may make orders as it thinks fit to obtain expeditious hearing of the suit
 - iii. Any party to the suit may apply for its dismissal as provided in sub-rule 1.
 - iv. The court may dismiss the suit for non-compliance with any direction given under this order
 - v. A suit stands dismissed after two year where no step has been undertaken
 - vi. A party may apply to court after dismissal of a suit under this order
3. The applicant swore an affidavit indicative of the reasons of the inordinate delay in initiating the proceedings towards confirmation of grant. I am of the considered view that she has satisfied the criteria on sufficient cause why the dismissal order should be set aside to pave way for the confirmation of the grant intestate. It bears emphasis that the Applicant has also invited the court to proceed and confirm the grant of representation so that the estate can be distributed thereafter liquidated under Section 83(G) of the *Law of Succession Act*.

Consequently, the questions in the application are answered in the affirmative for the Succession Cause to be reinstated and simultaneously a certificate of confirmation of grant be issued forth by the Deputy Registrar of the High Court. Be that as it may be, the Applicant has 90 days from today’s date to ensure all procedural protocols to transmit the estate are complied with as per the law established. The final Status Conference to be on 15.12.2025

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 22ND DAY OF SEPTEMBER, 2025

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R. NYAKUNDI
JUDGE

