



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Samuel Mungai Njeraine (Deceased) (Probate & Administration
85 of 2022) [2025] KEHC 12719 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12719 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 85 OF 2022
RN NYAKUNDI, J
SEPTEMBER 17, 2025**

**IN THE MATTER OF THE ESTATE OF SAMUEL MUNGAI NJERAINI (DECEASED)
UNDER RULE 40(1) OF THE PROBATE AND ADMINISTRATION RULES SECTION
71(1) AND (2) OF THE LAWS OF SUCCESSION CAP 160 LAWS OF KENYA**

RULING

1. Before the Court is a Notice of Motion under Certificate of Urgency dated 22nd July 2025 seeking the following orders:
 - a. That this application be certified urgent, service be dispensed with thereof and the same be heard ex-parte in the first instance.
 - b. That the matter herein be and is hereby reinstated for hearing and determination on merit.
 - c. That the costs of this application be in the cause.Which application is based on the grounds:
 1. That the Petitioners/Administrators have been interested of the prosecution and determination of the estate herein
 2. That on 15th April 2024, this matter came up for hearing (Summons for confirmation) before the Honourable Court.
 3. That however, the Counsel in conduct of this suit was not present to proceed for the hearing as he was not aware the matter was coming up for hearing.
 4. That the non-attendance was therefore unintentional on the part of the Counsel for the Petitioners/Applicants which the unfortunate circumstances could not be predicted or avoided.
 5. That through this application, we humbly pray that the suit be reinstated and be heard on merit.



6. That the application has been made without unreasonable/inordinate delay.
7. That the application ought to be granted in the interests of equity and justice.
Which application is supported by the annexed Affidavit of Sammy M. Mathai Advocate for the Petitioners'/Applicants and such further grounds, reasons, arguments as follows:
 1. That I am and Advocate of the High Court of Kenya practicing as such in the name and style of Mathai Maina & Company Advocates who have the conduct of this matter on behalf of the Petitioners/Applicants and therefore duly authorized and competent to swear this affidavit.
 2. That on 15th April this matter came up for hearing (summons for confirmation) before the Honourable Court.
 3. That however, the Advocate in conduct of this suit was not present to proceed for the hearing as he was not aware the matter was coming up for hearing.
 4. That the Petitioner/Administrators instructed my firm to file an application for summons for confirmation of grant was filed on 4th June 2025 (Annexed and marked SSM1 is a copy of the application dated 28th May 2025 for summons for confirmation of grant).
 5. That a letter was written to request a hearing date for the application dated 28th May 2025 but the same bore no fruit (Annexed and marked SMM2 is a copy of the letter dated 4th July 2025).
 6. That my clerk visited the court registry for purposes of fixing a hearing date for the application dated 28th May 2025 and is when he was informed the matter was dismissed for want of prosecution.
 7. That the non-attendance was therefore unintentional on the part of the Petitioners/Applicants but as a result of an unfortunate circumstances which could have not been predicted or avoided.
 8. That we implore the Honourable Court that the mistake of the Counsel on record on this should not be visited on an innocent litigant.
 9. That through this application, we humbly pray that the suit be reinstated to be heard on merit to a just conclusion.
 10. That this application has been made without unreasonable/inordinate delay.
 11. That this application ought to be granted in the interest of equity and justice.

Decision

2. The enabling provisions underpinning exercise of discretion of a Court is within Section 1(A), 1(B), 3, 3(A) and Section 80 of the [CPA](#) as considered with Rule 73 (1) of the [Probate and Administration Rules](#).
3. In *Shah v Mbogo* [1979] EA 116 stated that:

“...this discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designated to assist a person who has deliberately sought, whether by evasion or otherwise to obstruct or delay the cause of justice.”



4. There must be sufficient cause to be shown by the Applicant before any relief of reinstating a dismissed suit in his or her favor. What constitutes sufficient cause was properly addressed in the persuasive case of *Parimal v Veena* in the following language:

“Sufficient cause” is an expression which has been used in large number of statutes. The meaning of the word “sufficient” is “adequate” or “enough”, in as much as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, “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 been “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 reasons that whenever the court exercises discretion, it has to be exercised judiciously”.

5. Before any reinstatement of a suit is undertaken by the Court, there must be sufficient grounds which negates the conduct of the Applicant was not due to inadvertency, inability, failure or bonafides to take a proactive, necessary or mandatory measure or steps to further one’s case in a timely manner. What the court should avoid is to casually or carelessly run to the provisions of Section 1(A), 1(B), 3, 3(A) of the *CPA* and 73 (1) of the *Probate and Administration Rules* by invoking the inherent jurisdiction without the effort of the Applicant adducing evidence providing sufficient cause why the delay in prosecuting the claim within a reasonable time.
6. In the case at bar, the Applicant has explained in sufficient details the circumstances which led to the dismissal of the suit. Accordingly, I consider it to be fair and just to reinstate the suit with no orders as to costs. Status conference on 30th October 2025 with a view to confirm the grant of letters of representation.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 17TH DAY OF SEPTEMBER 2025.

R. NYAKUNDI

JUDGE

