



REPUBLIC OF KENYA



**In re Estate of Shadrack Kipkoech Bonjo (Deceased) (Probate & Administration  
E015 of 2021) [2024] KEHC 9149 (KLR) (17 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9149 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
PROBATE & ADMINISTRATION E015 OF 2021**

**JR KARANJA, J**

**JULY 17, 2024**

**IN THE MATTER OF THE ESTATE OF SHADRACK KIPKOECH BONJO:::DECEASED**

**RULING**

1. The journey to obtaining the grant of Letters of Administration respecting the Estate of the Late Shadrack Kipkoech Bonjo (deceased) commenced on 1<sup>st</sup> September 2021 when Truphena Jeruto Bonjo (Petitioner) petitioned for probate of will and procedurally ended on 28<sup>th</sup> June 2022 with the grant issued to the Petitioner on the 15<sup>th</sup> March 2022 being confirmed and opening the way for distribution of the estate property amongst the rightful beneficiaries. The property comprised of several parcels of land and company shares and having been distributed lawfully among the beneficiaries' the estate was spent and file closed on the 22<sup>nd</sup> November 2023. The Administrator was accordingly discharged from her obligations.
2. Two years or so after the confirmation of grant the present application dated 23<sup>rd</sup> May 2024 was filed herein by Sammy Kipkosgei Rotich (Objector) seeking re-opening of file so as to allow the hearing on merit of an application for revocation of grant dated 13<sup>th</sup> May 2024. The Applicant/Objector therefore beseeches this court to exercise its discretion by an order to re-open this matter for consideration of a fresh application for revocation of the grant and the certificate of confirmation of grant.
3. In his supporting affidavit the Applicant averred that he is a beneficiary of the deceased by virtue of being his son and that he recently discovered to his detriment that he was left out of the proceedings herein thereby instructing his advocate to file summons for revocation of grant dated 13<sup>th</sup> May 2024. However, on learning from his advocates that the matter had been closed on the 22<sup>nd</sup> November 2023 it became necessary for the present application to be filed.
4. The Petitioner/ Respondent opposed the application on the basis of the averments contained in her replying affidavits and contended that she complied with all procedures under the *Law of Succession Act* and obtained the material grant and that throughout the process the Applicant never raised any objection at any stage such that the process was concluded with the estate being fully administered and a statement of account rendered accordingly.



5. The Petitioner further contended that the Applicant is guilty of inordinate delay and laches as he opted not to participate in the proceedings herein within the requisite time lines. In the circumstances, the re-opening of this matter would be disruptive and not in the interest of fair administration of justice.
6. This court having considered the application as argued by way of written submissions filed by both parties for and against, would opine that the only issue for determination is whether the Applicant has shown sufficient and satisfactory grounds for exercise of discretion in his favour.

In that regard it must first and foremost be pointed out that the Applicant alludes to an application dated 13<sup>th</sup> May 2024 for revocation of grant. However, such an application is nowhere in this record and may therefore be treated as non-existent thereby rendering the present application misconceived, incompetent and incurably defective.

7. Notwithstanding the foregoing, the court's power to re-open a closed matter is discretionary and such discretion is to be exercised judiciously on the basis of the facts and evidence available and the applicable for re-opening of a file as pronounced in the cited case of *Susan Wavinya Mutavi Vs. Isaac Njoroge & Another* [2020] eKLR, to wit: -

“First, the jurisdiction is a discretionary one and is to be exercised judiciously. In exercising that discretion, the court is duty bound to ensure the proposed re-opening of a party's case does not embarrass or prejudice the opposite party. Second where the proposed re-opening is intended to fill gaps in the evidence of the Applicant the court will not grant the plea.

Third, the plea of re-opening of a case will be rejected if there is inordinate and unexplained delay on the part of the Applicant. Fourth, the Applicant is required to demonstrate that the evidence he seeks to introduce could not have been obtained within reasonable diligence at that time of hearing of his case. Fifth, the evidence must be such that, if admitted, it would probably have an important influence on the result of the case though it need not be decisive. Lastly, the evidence must be apparently credible, though it need not be incontrovertible.”

8. Given that in this case, the grant was regularly issued and confirmed pursuant to the necessary provisions of the *Law of Succession Act* and that the entire estate was divided and duly distributed to the proper beneficiaries thereby becoming spent and no longer in existence in its original form, it would not serve the interest of justice to re-open the matter as doing so would not only embarrass the Petitioner but also highly prejudice her and all the other beneficiaries regard being given to the delay by the Applicant in bringing this application at this point in time.
9. Delay defeats equity and where a statute does not specify the time within which an action can be undertaken the action should nonetheless be done within reasonable time or without unreasonable delay. The delay of two (2) years in bringing this application or even the proposed application for revocation of grant since the confirmation of the grant was unreasonable (See, Section 58 of the *Interpretation and General Provisions Act*)
10. For all the factors and reason foregoing it is the finding of this court that the Applicant has failed to demonstrate sufficient and satisfactory grounds for exercise of this court's discretion in his favour.

Consequently, the present application is lacking in merit and is hereby dismissed with costs to the Respondent/Petitioner.

**DELIVERED AND DATED THIS 17<sup>TH</sup> DAY OF JULY 2024**

**J. R. KARANJAH,**



**JUDGE**

