



**In re the Estate of Mohamed Abdullahi Kambi (Deceased) (Succession Cause E258 of 2021) [2024] KEHC 9657 (KLR) (Family) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9657 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**SUCCESSION CAUSE E258 OF 2021**  
**H NAMISI, J**  
**JULY 15, 2024**  
**IN THE MATTER OF THE ESTATE OF MOHAMED ADBULLAHI KAMBI (DECEASED)**  
**IN THE MATTER OF**  
**ABDULLAHI KAMBI GURACHA ..... ADMINISTRATOR**

**RULING**

1. Before the Court is a Notice of Motion dated 19th March 2024 seeking the following orders:
  - i. The order of dismissal and closure of the file made on the 18th day of March 2024 due to non-attendance of the Applicant be set aside;
  - ii. That the summons for the confirmation of the Grant be re-instated and proceed to hearing.
  - iii. That the costs of the application be costs in the cause.
2. The Application is supported by the Affidavit of John Masese, Counsel for the Administrator. In the Affidavit, counsel has noted that despite filing Summons for Confirmation of Grant in November 2022, the same was not heard since the court file could not be traced. After several attempts in tracing the file, the same was found and the application set down for hearing on 18th March 2024. However, due to a mishap with the firm's diary for 2024, the same was not diarised and Counsel did not attend on the material day. As a result, the matter was dismissed.
3. I have looked at the proceedings in the court file and the same indicate that this matter was placed before the Deputy Registrar on 22nd November 2023, in the absence of counsel, when the court gave the mention date of 18th March 2023. On 18th March 2024, Counsel did not attend court. The Court noted that the file had been closed on 18th January 2023 by Hon. Lady Justice P. Nyaundi.
4. Article 159 (2) (b) of the *Constitution* provides that courts and tribunals shall be guided by the principle that justice shall not be delayed. It is the duty of the court, Advocates and litigants to ensure that matters



are concluded expeditiously without inexcusable delay. This principle is encapsulated in sections 1A and 1B of the *Civil Procedure Act*, Cap 21 of the Laws of Kenya.

5. Pursuant to the provisions of section 3A of the *Civil Procedure Act*, this court enjoys a wide discretion over matters and issues before it, including the question as to whether or not it should reinstate a suit dismissed on account of non-attendance by Counsel.
6. Counsel has explained the reason for his non-attendance, and it is clear that upon learning of the dismissal, he took immediate steps to have the same reinstated. He, therefore, cannot be accused of inordinate delay. Further, Counsel's mistake should not be visited upon the client.
7. One of the issues that confronts me is the need for expeditious conclusion of suits. With this in mind, I order as follows:
  - i. The Notice of Motion dated 20th March 2024 is hereby allowed.
  - ii. The Summons for Confirmation of Grant dated 8th November 2022 shall be set down for hearing forthwith;
  - iii. Costs in the cause

**DATED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF JULY 2024**

**HELENE R. NAMISI**

**JUDGE**

Delivered on virtual platform in the presence of:-

Masese for the Applicant

