



REPUBLIC OF KENYA



**In re Estate of the Late M'ikiara Ireri (Deceased) (Succession Cause 674 of 2015) [2023] KEHC 3454 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3454 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
SUCCESSION CAUSE 674 OF 2015**

**LW GITARI, J**

**APRIL 20, 2023**

**IN THE MATTER OF THE ESTATE OF THE LATE M'IKIARA IRERI (DECEASED)**

**IN THE MATTER OF**

**EUSTACE NDEKE KIARA ..... APPLICANT**

**RULING**

1. By a summons application dated 18<sup>th</sup> May, 2022, the Applicant seeks for the following orders:
  - i. That this Honourable court be pleased to set aside the orders made on 2<sup>nd</sup> October, 2018 which dismissed this petition and the instant suit be reinstated for hearing and determination.
  - ii. That upon the court granting prayer 1 herein above, the summons for confirmation of grant attached herein dated 14/12/2021 be deemed as filed and be listed for hearing.
  - iii. That cost of this application be in the cause.
2. The application is based on the grounds on the face of it and is supported by the affidavit of Eustace Ndeke Kiara sworn on the same 18<sup>th</sup> May, 2022.
3. The Applicant deposes that letters of administration were issued to him on 10<sup>th</sup> May, 2016 and that on 2<sup>nd</sup> October, 2018, the suit was dismissed for want of prosecution. That he never received any notice for dismissal of the petition from the court's registry staff and only came to discover the dismissal of the matter late in the year 2021 when he came to file summons for confirmation of the grant. The Applicant further deposes that the delay in filling the summons for confirmation of grant was occasioned by the disagreement among the beneficiaries on the mode of distribution. He thus urges this court to reinstate the suit to enable him finalize the matter.
4. The application is not opposed.



## Analysis

5. The Court has power to revoke a grant for want of prosecution by failure to seek confirmation of Grant under Section 76 (d) (i) of the *Law of Succession Act* on the ground that-

“that the person to whom the grant was made has failed, after due notice and without reasonable cause either—

- (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow;”

6. Section 73 of the *Law of Succession Act* authorizes the court to give notice to an administrator to an estate to apply for confirmation thereof in terms as follows:

“The court shall within one year from the date of any grant of representation, give notice to the holder of the grant to apply for confirmation thereof.”

7. The grant in this cause was issued on 10<sup>th</sup> May, 2016. The cause was later dismissed on 2<sup>nd</sup> October, 2018 and the Applicant states that he only came to know of the dismissal late in 2021. Despite service of the notice to show cause, the Applicant still failed to apply for confirmation of grant before 2<sup>nd</sup> October, 2018 when the matter was dismissed.

8. The factors that the Court should take into consideration for the purpose of reinstatement of suits are numerous, and were addressed in the persuasive case of *Ivita v Kyumbu* [1975] eKLR (Chesoni J), where the court stated as follows:

“The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay. Justice is justice to both the Plaintiff and Defendant; so both parties to the suit must be considered and the position of the judge too, because it is no easy task for the documents, and, or witnesses may be missing and evidence is weak due to the disappearance of human memory resulting from lapse of time. The Defendant must however satisfy the court that it will be prejudiced by the delay or even that the plaintiff will be prejudiced. He must show that justice will not be done in the case due to the prolonged delay on the part of the plaintiff before the court will exercise its discretion in his favour and dismiss the action for want of prosecution. Thus, even if delay is prolonged if the court is satisfied with the plaintiff's excuse for the delay, the action will not be dismissed, but it will be ordered that it be set down for hearing at the earliest available time.”

9. In this case, the notice given to the Applicant was specific when the matter would come up before court. In my view, the Applicant was given sufficient notice to express his desire to further prosecute the matter. However, given that the beneficiaries have now agreed on the mode of distribution of the estate, it is my view that it would be in the interest of justice and all parties concerned to allow the present application so that the same can proceed to its final conclusion. I am also minded of Article 159(2) (d) of the *Constitution* which provides that when exercising Judicial authority the courts and tribunals shall be guided by the principle that:-

“Justice shall be administered without undue regard to procedural technicalities.”

This is a call on the courts to seek to do sub-stantive Justice. This is a succession matter which has been pending in court since 2015. This court should therefore seek to have the dispute resolved once and for all rather than make orders that will prolong its litigation further. I find that the order issued on



2/10/2018 is a hindrance to the conclusion of this matter and should therefore be set aside to enable the petitioner to move the court to confirm the grant.

**Conclusion:**

For the reasons stated I find that the application has merits and is allowed. I order that:-

1. The order issued on 2/10/2018 is set aside.
2. The summons for confirmation of grant dated 14/12/2021 is deemed as properly filed.
3. The summons shall be listed for hearing expeditiously.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 20<sup>TH</sup> DAY OF APRIL 2023.**

**L.W. GITARI**

**JUDGE**

