



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Eloge Otibine (Deceased) (Succession Cause  
408 of 2011) [2023] KEHC 18601 (KLR) (19 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18601 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION CAUSE 408 OF 2011  
WM MUSYOKA, J  
JUNE 19, 2023**

**RULING**

1. The Motion, dated July 7, 2021, seeks reinstatement of an application, dated November 9, 2020, which was dismissed on June 8, 2021, for non-attendance and want of prosecution. It is brought at the instance of Emmanuel Omuse Eloge. He avers that his Advocate came into contact with a person who had Covid-19, on June 6, 2021, and he went into isolation, and was thus unable to attend court on June 8, 2021.
2. I do not find the explanation given adequate. Firstly, it was the Advocate who was exposed to Covid-19, why did he not swear the affidavit himself? The deponent could not have had personal knowledge of that, yet he does not disclose where he got that information, or how that came to his knowledge. Secondly, if the Advocate was unavailable for the alleged reasons, why did the deponent himself not attend court? I do not think that good reasons and excuses exist for the deponent and his Advocate not attending court.
3. However, I note that the application was served, but it was not responded to. It is unopposed. Secondly, this is a family matter. It is only for those reasons that I would allow the application, which I hereby do. A date for hearing shall be given at the delivery of this ruling.
4. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 19TH DAY  
OF JUNE 2023**

**WM MUSYOKA**

**JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Appearances**

**Mr. Okeyo, instructed by Okeyo Ochiel & Company, Advocates for the applicant.**

**succession cause no. 408 of 2011 – ruling 2**

