



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Sophina Lilian Muthoni (Deceased) (Succession Cause E128 of 2021) [2023] KEHC 22085 (KLR) (Family) (3 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 22085 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**  
**FAMILY**  
**SUCCESSION CAUSE E128 OF 2021**  
**EKO OGOLA, J**  
**JULY 3, 2023**

**RULING**

1. The Notice of Motion Application before this Court is dated January 30, 2023. The Applicant prays for the following:-
  - a. Spent;
  - b. That Succession Cause No E128 of 2021: In the Matter of the Estate of Sophina Lilian Muthoni (deceased) be immediately reinstated and a fresh date for reactivation/closure issued.
  - c. That the cost of the Application be provided
2. The Application is supported by the grounds on set forth therein and the Supporting Affidavit of Eliud Ogutu, Advocate for the Petitioners. He deposed that the Petitioner's Petition for grant of Letters of Administration had been struck out and dismissed on January 16, 2023 for non-attendance. He averred that the court notified the law firm via email on December 21, 2022, however, his office was closed for the long holiday and the court was also on vacation. Further to this, he deposed that the email landed in his Spam folder, therefore, he was unable to see it in good time. These are the reasons for the non-attendance.

**Determination**

3. I have considered the Application, the Affidavit and the annexure. The record shows that indeed this matter was dismissed on January 16, 2021 for non-attendance. The Applicant's reason for non-attendance is that he did not see the communication from the court. In *Essanji & Another v Solanki (1968) EA 218* it was observed;

' The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that error and lapses should not necessarily debar a litigant from the pursuit of his rights.'



4. Taken in totality, the circumstances herein should the litigants be faulted for the mistake of Counsel? The litigants are entitled to have their day in Court to fully prosecute their Petition for the grant of Letters of Administration. This is especially since if orders sought are not granted, it would cause prejudice to the parties.
5. The upshot is that the Court will exercise its discretion in the interest of justice grant the orders as prayed.
6. Cost of the Application be borne by the Applicant.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 3<sup>RD</sup> DAY OF JULY 2023**

**E.K. OGOLA**

**JUDGE**

In the presence of:

N/A for the Applicant

