



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
SUCCESSION CAUSE NO. 843 OF 2010
IN THE MATTER OF THE ESTATE OF MASAI
MUINDE MUTWII (DECEASED)
RULING OF THE COURT

1. The Petitioners/Applicants have filed a Notice of Motion dated 27/10/2016 seeking the following reliefs:-

- 1. This Honourable court be pleased to set aside the order made on 20/07/2015 revoking the Grant issued on 30/03/2011 and dismissing the Petitioner's cause for want of prosecution.*
- 2. Upon the grant of prayer 1 hereinabove, this Honourable court be pleased to reinstate the Grant to enable the Petitioner prosecute it to final disposal.*
- 3. This Honourable court allows the draft summons for confirmation of grant attached to the application be deemed as properly filed upon payment of the requisite court filing fees.*
- 4. Costs be in the cause.*

2. The Application is supported by an affidavit sworn by the Petitioner's counsel and which raised the following grounds:-

- a. That the Petitioner's cause including the Grant herein was dismissed on 20th July, 2015 for want of prosecution which notice did not specify a particular date to attend court according to the justice @ last initiative Notice dated 23/06/2015.*
- b. That failure to take the necessary action to prosecute the succession cause herein filed in court on 25/1/2010 was occasioned by the stalemate among the beneficiaries on how to distribute the estate herein.*
- c. That on 22/07/2015 a letter from the law firm of Kabaka & Associates Advocates was written to the Deputy Registrar informing him that the beneficiaries had agreed on the distribution of the estate and requested for two months to file the final schedule of the distribution of the estate and take a date for final confirmation of grant but however the matter was still dismissed.*
- d. That the beneficiaries have now agreed on the mode of distribution of the estate and are now eager and anxious of having the matter herein concluded and obtain the necessary orders from this Honourable court.*

e. That failing to prosecute the matter herein is favourable and as such failure was not deliberate.

f. That for the ends of justice to be met the prayers herein sought to be granted.

3. I have considered the Applicant's application as well as the affidavit and annexures s thereto. I have also considered the authorities cited. It is not in dispute that this cause was dismissed on the 20/07/2015 and Grant revoked for want of prosecution. Apparently, the Judiciary had embarked on an exercise dubbed "justice @ last initiative in which notices were issued directing litigants to ensure they prosecuted their matters and further that they had been invited to show cause why their cases should not be dismissed for want of prosecution. The Judiciary had been bogged down by major backlog of cases and it had been decided to reduce the said backlog. The notice issued to the Applicants did not clearly specify the exact date that they were required to attend court and to show cause why the cause should not be dismissed for want of prosecution". However, the Applicant has annexed a letter dated 22/07/2015 addressed to the Deputy Registrar Machakos High court requesting that the notice to show cause be deferred for at least two (2) months to enable the Applicant and beneficiaries iron out issues regarding the mode of distribution. It seems by that time the cause had already been dismissed. The Applicant has explained that there had been some wrangles amongst the beneficiaries on the mode of distribution and which led to the delay in filing for confirmation of grant. The Applicant has indicated that the Petitioners and the beneficiaries are now ready and willing to proceed with finalizing the matter. In fact as a sign of their readiness they have annexed a draft copy of an application for confirmation of grant. I am satisfied by the reasons advanced by the Applicants which led to the delay in filing for confirmation of grant. It is common across the country for administrators of deceased's estates and beneficiaries to squabble over the mode of distribution of deceased's estates. In fact majority of the Probate and Administration causes pending before Kenyan Courts are as a result of disagreements and disputes among Petitioners, beneficiaries and interested parties. I find the delay herein forgivable.

4. ORDERS:

For the foregoing observations, I find the Applicant's Application dated 27/10/2016 merited. The same is allowed in terms of prayers (2), (3) and (5). Prayer No. 4 is declined as same relates only to a draft application for confirmation of grant which is yet to be fine tuned before same is filed. To this end therefore, the Applicants are ordered to ensure they file the requisite Application for confirmation of grant within the next sixty (60) days from the date hereof.

Dated, signed and delivered at Machakos this 3rd day of **APRIL** 2017.

D. K. KEMEI

JUDGE

In the presence of:

...Betany for Applicant.....

...C/A: Kituva.....