



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

SUCCESSION CAUSE NO. 360 OF 1994

IN THE MATTER OF THE ESTATE OF OYIOKA NATHAN OMAMBIA (DECEASED)

-AND-

JOHN OROO OYIOKA .....APPLICANT

RULING

1. The application dated **6<sup>th</sup> April 2016**, is made under Rule 73 of the Probate & Administration Rules and is for setting aside of this court's order dated 30<sup>th</sup> November 2015, dismissing this cause and for the re-instatement of the cause.

The application is based on the grounds contained in the applicant's supporting affidavit dated 6<sup>th</sup> April 2016. His main complaint is that this cause was dismissed on 30<sup>th</sup> November 2015, without notice to himself. He therefore desires a re-instatement of the cause so that he may complete the administration of the estate of the deceased **Oyioka Nathan Omambia**.

2. **Mr. Soire**, learned counsel appeared for the applicant at the hearing of the application and basically relied on the applicant's supporting affidavit in urging this court to allow the application. He said that he came on record for the first time when he filed this application after receiving necessary instructions from the applicant.

On the 31<sup>st</sup> May 2016, when the application came up for hearing for the first time the applicant was advised by the court to avail all the beneficiaries in court on the next hearing date but on that date i.e 5<sup>th</sup> July 2016, it was only the applicant who appeared. No explanation was offered for the absence of the other beneficiaries.

3. Be that as it may, the material grant of letters of administration intestate was issued to the applicant, **John Oroo Oyioka**, on the 13<sup>th</sup> January 1995, approximately twenty one (21) years ago. The sole estate property was land parcel **No. Wanjare/Bokeira/1428**, and the beneficiaries were three widows of the deceased i.e Sindage Nyangige Oyioka, Mary Bisieri Oyioka and Yuna oyioka.

The other beneficiaries were the sons of the deceased i.e **Oroo Oyioka John** (applicant) and Paul Nyabaro Oyioka.

As the appointed administrator of the estate of the deceased, the applicant was required to apply for confirmation of grant after expiry of six (6) months from the date of issue but he did not do so. This lethargy displayed by the applicant in that regard prompted this court to wake him up from his slumber by issuing a notice to him to apply for confirmation of the grant.

The notice was issued most likely in the month of October 2005 as it required the applicant to apply for confirmation before the 30<sup>th</sup> November 2005.

4. By the 30<sup>th</sup> November 2005 (not 30<sup>th</sup> November 2015), the applicant had not applied for confirmation of grant, ten (10) years after it was issued. The court did not have much choice and had to dismiss this succession cause for want of prosecution. Eleven (11) or so years later, the applicant now comes for a setting aside of the dismissal order and re-instatement of the cause so that he may complete

the administration of the estate of the deceased. However, he has not given the court the current status of the estate. Is it spent or diminished? Is it in the same state as it was in 1995? What about the rest of the beneficiaries, are they dead or alive? Are they aware of this application if they are alive and have they benefitted from the estate?

Unless these questions are answered to the satisfaction of the court, the court cannot exercise its discretion in favour of the applicant as doing so without answers to the questions hereinabove would be to encourage abuse of the court process by indolent litigants.

5. So, moving forward, the applicant must file a supplementary affidavit directed towards answering the questions aforementioned within the next thirty (30) days from this date hereof and thereafter have the matter fixed for mention for further orders. Short of this, the applicant may fix the matter for mention on any convenient date after the Court's August Vacation and ensure that all the beneficiaries of the estate are present on the appointed date.

Ordered accordingly.

**[Read and signed this 6<sup>th</sup> day of July 2016].**

**J.R. Karanjah**

**Judge**