



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

SUCCESSION CAUSE 28 OF 1998

IN THE MATTER OF THE ESTATE OF MANASEH NYONGESA MUCHWINGI -DECEASED

AND

BENJAMIN NYONGESA MUCHWINGI ::::::::::: PETITIONER/RESPONDENT

~VRS~

MARIASIANO MUTIEMBU EVERLYNE ::::::::::: APPLICANT

RULING

On 8/3/2012 this court dismissed with costs the Applicant's application dated 22/10/2010 for want of prosecution. The application had been brought seeking to revoke and/or annul the grant that was on 20/11/2008 issued to the Respondent in the Cause in respect of the estate of the deceased Manaseh Nyongesa Muchwingi. Her case was that the Respondent had secretly commenced the Cause and obtained the grant and in the process disinherited her and her son Protus Waswa Nyongesa in respect of land parcel no.Bungoma/Kabuyefwe/297 and yet she was the third widow to the estate and therefore entitled to benefit along with the son. This is a substantial claim.

The application was dismissed because she failed to attend to prosecute it. Directions had on 14/7/2011 been taken that her application be heard by the parties tendering oral evidence. She states that she is a cancer patient and was sick on the hearing day and was unable to attend. She say she suffers from breast cancer and attended hospital for treatment. The Respondent swore a replying affidavit to say that the Applicant was at home on the day in question and had not gone to hospital. Breast cancer is a serious condition. It is unlikely that a woman would state to court that she suffers from that condition when it is not true. She produced a note from Sirakaru Community Dispensary to say that she attends the dispensary on alternate days of the week for dressing. It states that she was breast cancer.

I accept that the Applicant's failure to attend court was not deliberate but was due to having attended hospital attention relating to her medical condition. In any case, this application was brought 6 days following the dismissal of her matter. This demonstrates keenness to have her case heard.

It has not been alleged or shown that the Respondent will suffer such loss or inconvenience that

costs cannot compensate, if the application is allowed. But more important, justice is better served when a dispute is resolved on merits.

I allow the application. This is a family dispute. I make no order as to costs.

Dated, signed and delivered at Bungoma this 5th day of July 2012.

A. O. MUCHELULE
JUDGE