

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION MILIMANI

SUCCESSION CAUSE NO. E3397 OF 2022

IN THE MATTER OF THE ESTATE OF KAUSHI WADHIA

(DECEASED)

SHARAD WADHIA

OBJECTOR/APPLICANT

VERSUS

KHUSHIV KAUSHIK WADHIA

PETITIONER

RULING

1. Kaushi Wadhia died on 4th August 2022. His daughter, Vruti Kaushik Wadhia, and son, Khushiv Kaushik Wadhia, petitioned for Letters of Administration intestate. Sharad Wadhia, the deceased's brother (objector), filed an objection via a notice dated 2nd February, 2023.

2. The matter was set down for hearing on 23rd July 2024 and the objection was dismissed for want of prosecution, the matter was thereafter set down for other proceedings. As there was no valid objection in place, a Grant of Letters of Administration intestate was issued on 18th December, 2024 to the petitioners.

3. This ruling is on the Objector's application dated 17th April, 2025, in which he seeks the following orders;

(i) THAT this application be certified as extremely urgent and be heard ex-parte in the first instance and a date be given for its hearing inter-partes;

(ii) THAT this Honourable Court be pleased to set aside its orders issued on 23rd July, 2025 dismissing the Applicant's objection for want of prosecution and do reinstate the same for hearing and determination;

(iii) THAT this Honourable Court be pleased to set aside the Grant of Letters of Administration issued on 18th December, 2024;

(iv) THAT this Honourable Court be pleased to stay hearing of the Summons for Confirmation of Grant slated for 25th March, 2025 pending the hearing and determination of the Application.

(v) THAT costs of this application be in the Cause.

4. The application is opposed.

Applicant's case

5. The applicant asserts that the dismissal was unbeknownst to both the Objector and his counsel and contends that the dismissal is highly prejudicial, leaving the Objector at the mercy of the Petitioner. The Applicant maintains that the objection raises serious grounds and that the lack of consideration shall be highly detrimental to his interests.

6. The Applicant further contends that the mistake of counsel should not be attributed to him as a client and has requested the Court to set aside the dismissal order.

Respondent's case

7. The Respondent on the other hand, accused the Applicant of being indolent and argued that the dismissal was justified since the Applicant was not keen on prosecuting the objection.

8. The Respondent argued that the delay in resolving the matter was prejudicial to the beneficiaries and urged the court to proceed with the pending application for confirmation of grant. The Respondent accused the Applicant of intermeddling and deliberately delaying the conclusion of the matter.

9. I have reviewed the positions taken by the parties and the submissions filed. I find that the following are the issues for determination:

i. Whether the dismissal order should be set aside and the objection reinstated;

ii. Whether the court should set aside the grant of letters issued in the matter; and

iii. Whether the court should stay the confirmation of the grant.

10. The record shows that the Applicant's counsel attended court after the dismissal order and sought directions regarding the hearing of the objection. It was during one of these attendances that the Respondent's counsel informed him that the objection had been dismissed for want of prosecution. This was approximately 8 months after the dismissal order was made.
11. The record shows that the Objector's counsel made subsequent attendances post the dismissal order, and it is believable that they were not aware of the dismissal order prior to the above attendance. The application was also made less than a month after the referenced attendance.
12. The court has discretion to set aside a dismissal order on terms as to costs or otherwise, but the discretion will only be exercised if it serves the ends of justice.
13. As there was no objection, a grant of letters of administration intestate has already been issued, and

administrators appointed. The administrators had also previously successfully obtained a Special Grant *ad colligenda bona*, limited to collecting, receiving and preserving the estate.

14. There have been numerous accusations and counteraccusations in the pleadings regarding access to and management of the estate. The lack of an appointed personal representative/administrator(s) can lead to the dissipation or loss of a deceased person's estate. The Courts aim to ensure the timely appointment of personal representatives to safeguard the estate and prevent loss.

15. The Applicant is the brother of the deceased. He did not file a cross-petition after the Petitioners' response to the objection notice.

16. The objection mainly rests on the Applicant's concern that the Respondent is unfit to manage the estate and that he (the Applicant) would have been better suited if he had been involved in its administration, given that he was actively engaged in managing the estate during the deceased's lifetime,

acting as his guardian and manager of the estate. However, I must also bear in mind at this stage that the **Law of Succession Act** includes a provision under **Section 76**, the legal basis upon which a Court will exercise its discretion to revoke a grant of representation.

17. Under **Section 66 of the Law of Succession Act**, the priority for applying for administration of the estate is a surviving spouse. If there is no spouse, the next in line are the deceased's children. In the absence of both, the priority shifts to the deceased's parents, then siblings, including grandchildren and other relatives, up to the sixth degree of consanguinity. The Grant in this case was issued to the surviving children of the deceased who are legally recognized adults.

18. After careful consideration, I have concluded that it is not in the interest of justice to set aside the Grant that has already been issued. The Grant is pending confirmation. Besides, the window remains open in succession proceedings, allowing a party with a

reasonable cause to pursue avenues in the succession court where necessary.

19. The prayers in the application fail. I make no order as to costs.

20. It is so ordered.

DATED, DELIVERED and SIGNED at NAIROBI through the Microsoft Teams Online Platform on this **30TH** day of **SEPTEMBER, 2025.**

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Mr. Odek, Advocate for the Petitioners/Respondent

Ms. Kareithi, Advocate for the Objector