

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

PROBATE AND ADMINISTRATION CAUSE NO. 121 OF 2016

IN THE MATTER OF THE ESTATE OF HANDERSON MWANYOLO

MWALUMBO (DECEASED)

AND

IN THE MATTER OF APPLICATION FOR REINSTATEMENT

BY

JUSTIN

MWALUMBO

MWANYOLO.....PETITIONER/APPLICANT

RULING

1. The application coming for consideration in this Ruling is dated 6th November 2025 brought under Rules 14, 26, 49, 63 and 73 of the Probate and Administration Rules, Sections 47 and 76 of the Law of Succession Act and Order 8 Rule 3 and Order 12 Rule 7 of the Civil Procedure Rules, 2010 and any other provisions of the Law seeking the following orders:-

(i) THAT this Honorable Court be pleased to set aside the Orders made on 5th December 2022 dismissing this succession cause for want of prosecution and the cause be reinstated for hearing on merit.

(ii) THAT the Applicant be granted leave to amend the petition for grant of letters of administration intestate in terms of the draft annexed hereto.

(iii) THAT the costs of this application be in the cause.

2. The application is supported by the affidavit of **JUSTIN MWALUMBO MWANYOLO**, the Administrator of the estate of **HANDERSON MWANYOLO MWALUMBO (deceased)**.
3. The Administrator stated in the affidavit that the cause was dismissed for want of prosecution on 5th December 2022 having been filed on 6th November 2006.
4. That the beneficiaries were unable to agree on the mode of distribution of the estate of the deceased.
5. That the failure to prosecute the matter was not intentional.
6. That the estate remains unadministered and the beneficiaries are suffering prejudice.
7. Further that the beneficiaries, have now agreed on the mode of distribution in accordance with the draft amended petition and they seek leave to amend the petition for grant of letters of administration.
8. The application before this court, dated 6th November 2025, seeks the reinstatement of this succession cause following its dismissal for want of prosecution on 5th December 2022, and for leave to amend the petition for grant of letters of administration intestate.

9. The administrator, Justin Mwalumbo Mwanyolo, explains that the matter has been delayed because the beneficiaries were unable to agree on the mode of distribution of the deceased's estate.
10. He contends that the failure to prosecute the matter was not intentional, that the estate remains unadministered to the prejudice of the beneficiaries, and that the family has now finally agreed on a distribution scheme which they wish to formalise through an amended petition.
11. The court has carefully considered the application and the reasons advanced for the delay.
12. The power to reinstate a dismissed cause is discretionary, intended to serve the interests of justice rather than to punish a litigant.
13. While the dismissal on 5th December 2022 was a proper exercise of the court's case management authority to prevent dormant files from clogging the system, the court must balance this against the overarching objective of facilitating the just and expeditious resolution of disputes.
14. In this instance, the reason for the delay is not a lack of interest in the deceased's estate but rather an inability among the family members to reach a consensus on how to share the assets.

15. A delay stemming from internal family disagreements, while regrettable, is qualitatively different from mere indolence or an abandonment of the cause.
16. The court is persuaded that the administrator has offered a sufficient and credible explanation for the delay.
17. Furthermore, the applicant has indicated a clear and immediate intention to move the matter forward by seeking to file an amended petition that reflects a new family agreement.
18. The ultimate goal of probate and administration proceedings is the efficient and lawful distribution of a decedent's estate to the rightful beneficiaries.
19. To let this cause remain dismissed would not serve that goal; rather, it would force the family to begin the process anew, incurring further costs and delays, a consequence that would not serve the interests of justice.
20. The court therefore finds that the orders of dismissal should be set aside and the cause reinstated to its active docket.
21. Turning to the second limb of the application, the administrator seeks leave to amend the petition.
22. The court notes that the draft amended petition is annexed to the application and is intended to reflect the beneficiaries' current agreement on distribution.

23. The general principle in Kenyan law, applicable to succession matters by virtue of Rule 63 of the Probate and Administration Rules, is that amendments should be freely allowed to enable the court to determine the true issues in controversy between the parties.

24. The purpose of a petition for a grant is to provide the court with accurate information regarding the deceased's family, assets, and the persons entitled to a share.

25. Where, as here, the family dynamics or their agreements have evolved, it is not only permissible but prudent for the administrator to update the court by amending the petition.

26. No prejudice has been shown to any party, and the grant of leave to amend will allow for a more accurate and just determination of the succession cause.

27. The request to amend is therefore meritorious and is allowed.

28. Consequently, the final orders of the court are as follows:

(i) The orders made on 5th December 2022 dismissing this succession cause for want of prosecution are hereby set aside, and the cause is reinstated.

(ii) The applicant is granted leave to amend the petition for grant of letters of administration intestate in terms of the draft annexed to the application dated 6th November 2025.

(iii) The amended petition shall be filed fourteen (14) days of this ruling.

(iv) The costs of this application shall be in the cause

29. Orders to issue accordingly.

Dated, signed and delivered this 21st April 2026 in open court at Voi High Court.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

..... **for the Petitioner/Applicant**