



REPUBLIC OF KENYA



In re Estate of Taprandich Kimuge Cheronno (Deceased) (Miscellaneous Succession Cause 12 of 2017) [2025] KEHC 11973 (KLR) (11 August 2025) (Ruling)

Neutral citation: [2025] KEHC 11973 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS SUCCESSION CAUSE 12 OF 2017
RN NYAKUNDI, J
AUGUST 11, 2025**

IN THE MATTER OF THE ESTATE OF TAPRANDICH KIMUGE CHERONNO (DECEASED)

BETWEEN

MICAH KIMAIYO CHERONO 1ST APPLICANT

HARUN A.K. E KENEI 2ND APPLICANT

AND

BEATRICE JERONO JEBIWOT & 2 OTHERS RESPONDENT

RULING

1. What is pending before this Court for determination is a Notice of Motion Application dated 21st day of February 2025 where the Applicant is seeking the following orders:
 - a. The orders of 13/02/2025 dismissing the Plaintiff's suit be set aside and the suit be re-instated for hearing on merit.
 - b. The Objectors be and are hereby granted an opportunity to tender his evidence and submissions.
 - c. Costs be in the cause.
2. The Application is made on the following grounds on the face of it among others;
 - a. The Petitioner's and Objectors' advocates were both not in court on 23/1/2025 when the matter was mentioned and a hearing date given.
 - b. The both the Petitioner's and Objectors' Counsels were not in court on 13/2/2025 when the matter was called for hearing.



- c. Counsel for the Objectors together with the Objectors arrived soon after the dismissal ready to proceed with the matter.
 - d. The Objectors have a good claim with high chances of success and should be given an opportunity to be heard.
 - e. The absence of the Objectors' counsel was not occasioned by the Objectors and should not be used to punish them.
 - f. The Petitioner shall not be prejudiced in any way if the Objectors are heard on merit and in any case the Petitioner's advocate shall be granted an opportunity to cross-examine the Objectors in the hearing thereof.
3. The application is supported by annexed affidavit sworn by Micah Kimaiyo Cheronono who deponed as follows;
- a. That I am the 1st Objector herein and I am well aware of the suit before this honorable court and therefore competent to swear this affidavit.
 - b. That I was informed by my advocate that on 23/1/2025 this suit was scheduled for hearing on 13/2/2025.
 - c. That on a that particular day when the suit was dismissed, I together with the other objectors herein visited the advocate's offices and we were ready to prosecute the matter, my advocate sent his office clerk to look for an advocate to inform court that he was ready to proceed and to ask for time allocation.
 - d. That I am informed by my advocate that unfortunately, the said clerk arrived in court a bit late when the matter had been mentioned and dismissed for non-attendance.
 - e. That when we arrived in court together with my advocate, we were informed by the clerk that the matter had been dismissed for non-attendance.
 - f. That non-attendance on our part together with our counsel was not deliberate as he had sent his clerk well in advance to attend court and inform court that we were ready to prosecute the matter.
 - g. That our non-attendance was not deliberate.
 - h. That I am desirous of proceeding with this suit expeditiously
 - i. That I am aware that I have a strong and meritorious case against the Petitioner and further that no prejudice will be suffered by the Petitioner if the suit is reinstated.
 - j. That the suit is a family succession matter and therefore, it should be allowed to proceed as it raises serious and tribal issues which can only be determined if the dismissal order is set aside.
 - k. That we have approached the court with clean hands and that any delay caused was no deliberately meant to delay the trial or otherwise obstruct the case.
 - l. That mistake of an advocate ought not to be visited upon an innocent client.
 - m. That we stand to suffer great prejudice, financial hardship and exposure to unnecessary detriment, a denial to access to justice and their right to have this dispute that can be resolve by allowing the reinstatement of the suit for purposes of hearing being heard on merit.



- n. That the Petitioner shall not be prejudiced should this application be reinstated.
- o. That I swear this affidavit in support of the application now before this Honorable Court.

Decision

- 4. The powers of this court to set aside an ex parte order or judgment is governed by Order 9(A) Rule 10 of the Civil Procedure Rules as read with Rule 73 (1) of the Probate and Administration Rules. The force of the law is that the court can exercise discretion to set aside or vary an ex parte judgment upon such terms as are just, and there is no requirement of parties. It may be just on the facts of the particular case to avoid hardship or injustice arising from inadvertence or mistake even though negligent, but the discretion should not be exercised to assist anyone to delay the course of justice. The Court of Appeal will not interfere with the judge's exercise of his discretion unless there has been a misdirection leading to a wrong decision, or a manifestly wrong decision leading to injustice. See *Maina v MAugiria* [1983] KLR 78:1 KAR 171; [1976-1985] EA 275; *Patel v EA Cargo Handling Services Limited* [1974] EA 75; *Mbogo v Shah* [1968] EA 93 at 96G; *Shabir Din v Ram Parkash Anand* 22 EACA 48 at 51.
 - (b) There are no limits or restrictions on the judge's discretion except that if he does vary the judgment he does so on such terms as may be just.
 - (c) The main concern if the court is to do justice to the parties, and the court will not impose conditions on itself to fetter the wide discretion given to it by the rules. Where it is a regular judgment the court will not usually set aside the judgment unless it is satisfied that there is a defence on the merits. However, a defence on merits does not mean a defence that must succeed. It means "a tribal issue" that is an issue which raises a prima facie defence and which should go to trial for adjudication. See *Mbogo v Shah* [1968] EA 93; *Kimani v Mcconnell* [1966] EA 547.
- 5. In this case, the dismissal order be and is hereby set aside for leave to be granted to the administrators to confirm the grant in favour of the estate of Taprandich Kimuge Cheronu.
- 6. The status conference is scheduled on 19th September 2025 for the parties to comply with section 66 of the *Law of Succession Act*. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 11TH AUGUST 2025

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R. NYAKUNDI
JUDGE

