



**In re Estate of Mukuri Mungai (Deceased) (Succession Cause 357 of 2020)
[2024] KEHC 2025 (KLR) (Civ) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2025 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
SUCCESSION CAUSE 357 OF 2020
HK CHEMITEI, J
FEBRUARY 29, 2024**

RULING

1. This ruling relates to the application dated 17th July, 2023 filed by the Applicant, Bessy D. Owiti – Counsel for Michael Mungai Mukuri who is a beneficiary of the deceased’s estate; seeking Orders That:
 - a. Spent.
 - b. This Honourable Court be pleased to set aside the orders issued on 30th June, 2023.
 - c. This Honourable Court be pleased to maintain the status quo in the Estate and allow for parties to file their statement of accounts and thereafter appoint new administrators.
 - d. Costs of this application be provided for.
2. The application is opposed by replying affidavit sworn by Mbalu Joseph Mutava – Counsel for Monica Mukuri and other beneficiaries; on 28th August, 2023.
3. The applicant has filed written submissions dated 26th September, 2023. The respondent has not filed written submissions.

Background:

4. This matter relates to the orders issued on 30th June, 2023 with respect to the application dated 16th June, 2023.
5. The applicant avers that she did not attend court on 30th June, 2023 because the court assistant communicated that the court was not sitting because the judge was attending official duty. This position is opposed by the respondent who avers that he was logged into court on the whole morning of 30th June, 2023 when the application dated 16th June 2023 was heard and that there was no such communication from the court assistant.



6. The applicant, in support of the instant application, avers that mistakes of counsel should not be metted upon their clients and prays that the orders issued on 30th June, 2023 which allowed the application dated 16th June, 2023 be set aside.

Analysis And Determination:

7. I have carefully considered the application, the responses as well as the written submissions filed by the parties and the issues for determination, as crafted by the applicant, are as follows:
 - a. Whether the mistake of counsel can be visited upon a client.
 - b. Whether the issues raised in opposition of the application are justified.
 - c. Whether the respondent will suffer any prejudice.
 - d. Whether the applicant has met the threshold for setting aside an interlocutory judgment.
8. At paragraph 27 of *Yooshin Engineering Corporation v Aia Architects Limited* (Civil Appeal E074 of 2022) [2023] KECA 872 (KLR) (7 July 2023) (Judgment) the court stated, “... However, even where the judgment is regular, the court still retains the wide discretion to set the same aside though if the court decides to set aside the judgment, depending on the circumstances, it may do so on conditions that are just. That discretion, being wide, the main concern is for the court to do justice to the parties, and in so doing the court will not impose conditions on itself to fetter the wide discretion given to it by the rules. It has however to ask itself under what conditions, if any, it ought to set aside the judgment and such conditions, if appropriate, must be just to both the Plaintiff and defendant...”
9. Looking at the reasons advanced by the counsel for the applicant I do not find the same plausible. There was no evidence of the claim that the court was not sitting on that particular morning. Neither was the name of the alleged court assistant indicated or at all.
10. At the same time and most importantly the estate must be allowed to move on. The appointment of administrators is the first step in execution of an estate. I note that they are all related. The court in its judgement dated 28th April 2023 blamed inaction on the part of the administrators.
11. To allow the application for now would respectfully be delaying the matter. The administrators on record should move with speed to have the estate distributed and finalized. Should any of the parties including the applicant have any objection to the manner of distribution then all is not lost as he shall still have the opportunity.
12. For now, the application is disallowed with no order as to costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 29TH DAY OF FEBRUARY 2024.

H K CHEMITEI.

JUDGE

