



REPUBLIC OF KENYA



**In re Estate of Okech Ayamba (Deceased) (Succession Cause
208 of 2014) [2024] KEHC 3539 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3539 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
SUCCESSION CAUSE 208 OF 2014
RPV WENDOH, J
MARCH 19, 2024
IN THE MATTER OF THE ESTATE OF OKECH AYAMBA (DECEASED)**

**IN THE MATTER OF
JOHN ODERO NGODI PETITIONER**

RULING

1. This cause relates to the estate of Okech Ayamba (Deceased) who died intestate on 4/5/2009. The applicant, John Odero Ngodi filed an application dated 31/5/2023 which was brought pursuant to the provisions of Order 12 Rule 7, Section 3A of the *Civil Procedure Act* & all other enabling provisions of the law. The applicant seeks the following orders: -
 1. That this court be pleased to set aside its orders dismissing the petition for want of prosecution and all consequential orders ensuing therefrom;
 2. That pursuant to the grant of prayer 2 above, this court be pleased to reinstate the petition for final disposal;
 3. Costs be provided for.
2. The application is hinged on the grounds in its body and the supporting affidavit of the applicant. The applicant deposed that he is the petitioner in Rongo Succession 243/12; that his Counsel tried to trace the file on numerous occasions but the same could not be traced; that he came to learn that the file had been transferred to Migori High Court and a new number was given being Succession No. 208 of 2014; that in the meantime, the suit was dismissed for want of prosecution as his Counsel was not aware of the transfer; that his Counsel made an application for reconstruction of the file but he was informed that the cause was dismissed for want of prosecution.
3. In further support of his application, the applicant filed written submissions dated 7/11/2023. The applicant submitted that the beneficiaries of the estate of the deceased will suffer substantial loss since the suit property of the deceased's estate is an ancestral land. The applicant also submitted that the



- order dismissing the petition and the consequential were not of the applicant's own making but the file was missing; that it will not be prejudicial to the applicant or the court if the orders are set aside. He urged the court to grant the orders sought.
4. I have considered the application, supporting affidavit and the submissions by the applicant. This cause was dismissed for want of prosecution on 20/6/2017. The applicant states that the cause had previously been filed before the Rongo Law Court but it was transferred to the Migori High Court without knowledge of his Counsel.
 5. The notice to show cause was issued by this court on 8/6/2017. There is no evidence of service of the notice to show cause upon the applicant and/or any of the beneficiaries of the estate of the deceased. Order 17 Rule 2 of the *Civil Procedure Rules* provides that a notice should be given to the parties to show cause why the suit should not be dismissed for want of prosecution. Therefore, there has to be notice given to the parties for them to appear in court to explain the reasons why they have not been able to prosecute their suit.
 6. In this instance, I have observed that there was no affidavit of service to prove service of the notice to show cause upon the applicant. Section 47 of the *Law of Succession Act* and Rule 73 of the *Probate and Administration Rules* gives this court inherent powers to make such orders as may be necessary to meet the ends of justice. The explanation given by the applicant on the circumstances which led to the dismissal of the succession cause is plausible and the applicant cannot be faulted for failing to appear in court.
 7. The succession cause was transferred to Migori. I have seen that there is an already filed petition for letters of administration intestate in the estate of the deceased. It was filed in the Rongo Law Courts. It is unclear why the file was transferred to Migori High Court as there is no such order.
 8. Be that as it may, I have read the letter from the Chief dated 21/5/2010. The Chief is from the former Homa Bay District whose address is in Asumbi. The death certificate was processed in Homabay. The subject property is Gem/Kajulu/460 which is Homabay County.
 9. Section 1A of the *Civil Procedure Act* provides that the courts are to facilitate the just, proportionate and affordable dispute resolution. I perceive that the concerned beneficiaries live within and/or around Homabay. All the eventual dealings concerning the estate of the deceased will be processed in the Homabay Land Registry. For good order, the succession proceedings are best suited to be handled in the Homabay High Court.
 10. Consequently, I make the following orders: -
 - a. The orders issued on 20/6/2017 are hereby set aside;
 - b. The Succession Cause is hereby reinstated;
 - c. The Succession Cause is hereby transferred to the Homabay High Court for hearing and disposal
 - d. The Succession Cause be mentioned before the Deputy Registrar Homa Bay High Court on 4/4/2024 for issuance of New number to confirm that
 - e. Costs to await determination of the cause.,

DATED, SIGNED AND DELIVERED AT MIGORI THIS 19TH DAY OF MARCH, 2024

R. WENDOH

JUDGE



Ruling delivered in the presence of;

No appearance for the Applicant.

Emma & Phelix Court Assistants.

