



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 74 OF 2011

IN THE MATTER OF THE ESTATE OF THE LATE MORUNG'OLE MUYA KOLE

PAUL HIRO LOTENG.....APPLICANT

VERSES

ANDREW MUYA KAITUKO.....RESPONDENT

RULING

1. The application by the Applicant filed on the 24th January, 2019 seeks to have the application for revocation of grant application dated 3rd October, 2018 be reinstated. He claims that when this matter came up for the hearing of the said application he misdiarised the same by indicating that it was due for hearing on 21st February, 2019 and not 21st January, 2019. As a result of the said mistake he did not attend court on the 23rd of January, 2019 when the court dismissed the same.
2. The respondent has responded vide the replying affidavit dated 22nd February, 2019 in which he has accused the applicant for being insincere. He said that he was present when the date was given in open court and he had not given any plausible reason.
3. The court has perused the said application and notes that it is true that the date was given in open court by consent. Indeed the Applicant has himself to blame if it is true that he mis diarised the date.
4. Nonetheless considering the gravity of the matter herein and that the same has to do with the estate of the deceased this court shall exercise its discretionary powers provide in law and in particular the provisions of Rule 73 of the Probate Rules under the Succession Act as well as the provision of Article 159 of the Constitution.
5. The Applicant is hereby granted another chance to ventilate his objection proceedings. The orders issued on 23rd January, 2019 are hereby set aside and the Applicant ordered to pay thrown away costs of Kshs.10,000 in the next 30 days from the date herein to the Respondent and in default the orders of reinstatement shall automatically lapse.

Dated signed and delivered at Kitale this 24th day of June 2019.

H. K. CHEMITEI

JUDGE

24/6/19

In The presence of:

Mr Teti holding brief for Kibe

Applicant present

Bororio for Munialo for the Applicant

Court Assistant – Kirong

Ruling read in open court.