

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

P&A CAUSE NO. 365 OF 2012

IN THE MATTER OF THE ESTATE OF TABARNO KILACH (DECEASED)

RULING

[1] The application dated **2 October 2018** was filed herein by the Petitioner/Applicant pursuant to **Article 159** of the Constitution, **Section 45 and 47** of the **Law of Succession Act, Chapter 160 Laws of Kenya**, and **Rule 73** of the **Probate and Administration Rules** for the review and setting aside of the Order dated **6 September 2018** by which the Petitioner's grant was revoked. The Petitioner also prayed that the Court be pleased to reinstate the Petition and the Grant of Letters of Administration Intestate issued on **9 July 2013** and order for the expeditious filing of Summons for Confirmation of the Grant.

[2] The application was premised on the grounds that the Petitioner did not receive the Notice dated **9 August 2018**, which was sent by post until **28 September 2018**, almost one month later. It was further the contention of the Petitioner that he was not aware that he was required to take steps in the matter after the issuance of Grant of Letters of Administration and made a commitment to move with due dispatch if granted the opportunity.

[3] This cause was filed on **2 November 2012** and a Grant of Letters of Administration Intestate was thereafter issued on **9 July 2013** to the Petitioner. That Grant was therefore due for confirmation in any time after **10 January 2014**. No action was taken by the Petitioner in that regard. Accordingly, on the **9 August 2018**, notice was issued to the Petitioner requiring him to apply forthwith for confirmation of the Grant, failing which the Grant would be revoked; for which reason the date of **6 September 2018** was appointed for the Petitioner's attendance. The record of **6 September 2018** shows that, due to non-compliance by the Petitioner, the Grant was revoked and the cause dismissed for want of prosecution.

[4] The Court does have powers, under **Section 47** of the **Law of Succession Act and Rule 73** of the **Probate and Administration Rules** to make such orders as would meet the ends of justice in such matters. The explanation offered by the Petitioner for his non-compliance and non-attendance on **6 September 2018** is plausible. Accordingly, I would allow his application and grant orders as hereunder:

[a] That the orders issued herein on **6 September 2018** be and are hereby set aside;

[b] That this Succession Cause be and is hereby reinstated as prayed;

[c] That an application for Confirmation of Grant be filed forthwith, at any rate not later than 14 days from the date hereof;

[d] That the costs of the application be costs in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 20TH DAY OF DECEMBER 2018

OLGA SEWE

JUDGE