



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
Succession Cause 222 of 2006

IN THE MATTER OF THE ESTATE OF

TAPKILE CHESANG CHERUIYOT DECEASED

AND

EZEKIEL KIPTARUS MUTAI PETITIONER

RULING

Application to reinstate a dismissed application of 29.5.07 for non attendance

I: Background

1. The advocate for the applicant in application dated 29th May, 2007 that sought an application to revoke grant failed to attend court on 26th May, 2009 when this matter was called up for hearing.
2. The matter concerned a succession cause in which the said advocate for the applicant and an advocate for the Petitioner/Respondent were to hear a consolidated matter before this court being HC. P&A. 226/06 and HC. P&A. 245/06.
3. The Court waited for the advocate and by 11.15a.m the petitioner/respondents advocate moved the court to have the application dismissed.
4. This was granted.
5. On the 26.5.09 the advocate filed an application to reinstate his application **under Rules 73 of the Probate and Administration Act.**

II: Application dated 26th May, 2009 to reinstate suit.

6. The advocate informed the court that he had to leave Kericho and go out of town to deal with an emergency. This he did but by the time he reached Kericho the matter had already been disposed of.
7. In reply, the advocate for the petitioner/respondent stated that the applicant was not a widow to the deceased and the application was defective.

III: Findings

8. The Court would accept the advocates for the applicant's explanation that he was not able to attend court due to unforeseen circumstances not fully disclosed to court.
9. **Obiter dictum**

The procedure of taking dates to court should be carefully monitored by the Deputy Registrar. That the dates for hearing of this application was for 11.6.09, then 8.6.09. These were taken ex parte and were irregular. The Deputy Registrar to note the same.

10. The costs of allowing this application will go to the petitioner. These will be assessed at throw away costs of Kshs. 2,000/= to be paid personally by the advocate for the applicant to the Petitioner/respondent.

DATED this 11th day of June, 2009 at **KERICHO**.

M.A. ANG'AWA

JUDGE

Advocates

S.K. Sigira advocate instructed M/S Siele Sigira & Co. advocates

for the objector/applicant – present

S.G. Ong'anyi advocate instructed by M/S S.G. Onganyi & Co. advocates

for the petitioner/respondent