



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT ELDORET

Prob & Admin Cause 185 of 2004

IN THE MATTER OF THE ESTATE OF KIPLAGAT MISOI.....DECEASED

RULING

This is an application under the provisions of Rule 63 of the Probate & Administration Rules for inter alia, the following orders:-

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1. -----

2. **That the order made on the 23rd January,2006 confirming the grant issued to the Respondent herein be reviewed and set aside.**

3. **That the applicant be granted leave to file an affidavit of protest to challenge the proposed confirmation.**

4. **That a new date be scheduled for the confirmation of the grant**

The grounds for the application are:-

(1) That the applicant had on 9/9/2005 entered a caveat in the estate of the above named Kiplagat Misoi Malakwen.

(2) That the applicant was not served with a warning that the Respondent had applied for confirmation of the grant.

(3) That the applicant by reason of the confirmation of the grant on 23/1/2006 has lost his twenty (20) acre claim part of plot No. 22 and which belonged to the deceased.

(4) That the applicant had been left out as a beneficiary to the Estate of the Late Kiplagat Arap Kimisoi.

(5) That there is a mistake apparent on the face of the records by reason of non – service upon the applicant.

(6) That there is “Sufficient Case” for reviewing the order on confirmation.

In opposition to the application, the Respondent states that she did receive a copy of the warning to the caveator and which she received on 18/5/2006. That the caveator must in all probability have received it

too.

First and foremost, I have perused the copy of the caveat in the Court filed. It is dated 8th August 2005 and received on 9th September, 2005. The Caveator duly paid a sum of Kshs 500/=. I hereby find that the applicant duly filed his caveat before the confirmation at the District Registry. It was the duty of the Eldoret Registry to have immediately forwarded a copy thereof to the Principal Registry for filing.

The Respondent claims that she did receive a copy of warning of the caveat on 18/5/2006. She did not attach a copy thereof to her affidavit. In any case if she received it, it was well after confirmation of the grant was made.

I hold that the Eldoret District Registry failed to serve notice of the caveat upon M/S Kiarie & Company Advocates as required by law. This has denied the Caveator the right and opportunity to be heard. The question of the Ruling in the case at Kakamega High Court and issue of limitations are a matter of merit in the objection proceedings.

In the interest of justice and in line with the requirements of the Laws, I do hereby grant prayers 2,3, and 4 of the Notice of Motion dated 17th May, 2006. The Caveator shall file his affidavit of protest within the next 30 days. Costs in the objection proceedings.

DATED & DELIVERED AT ELDORET ON THIS 13TH DAY OF FEBRUARY, 2008.

M.K. IBRAHIM,

JUDGE.
