



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**  
**Probate & Administration Cause 185 of 2001**

IN THE MATTER OF THE ESTATE OF  
CHRISTOPHER KIPLAGAT KINIGA – DECEASED

**RULING**

The application before me is for orders to amend an earlier summons for revocation of a grant. It is taken out under rules 49 and 73 of the Probate and Administration Rules.

The application is however opposed by the respondents whose contention it is, that the same is fatally defective as it is brought by way of Chamber Summons, instead of Summons under Form 104 of the Probate and Administration Forms.

It was the submission of Mr. Momanyi for the respondent that the applicant has to comply with Order VI A rule 7 of Civil Procedure rules, and that even then it would only apply after leave to amend has been obtained.

It was also his ground that the proposed amendment was dated before leave had been obtained. He relied on the case of Stockman Rozen Kenya Ltd v Da Gama Rose Group of Companies Ltd H.C.C.C. [2002] I KLR 572, which unfortunately would not apply in this instance as it revolved around the issue of amendment of pleadings and the issue of a new cause of action arising in a civil suit.

I am inclined to agree with Mrs. Manani's contention that Order VI A rule 7 aforementioned would only apply to amendments of pleadings as the heading denotes, in civil applications, and not in an application of this nature whose procedure is catered for under the Probate and Administration Rules, and in any event the said Order, is not one of the Civil Procedure Orders, which are mentioned in Rule 63 (1) of the Probate and Administration Rules, as applicable to matters arising under the Law of Succession Act.

I find no reason to fault the move to Apply for the orders by way of a Chamber Summons, nor does the fact that the proposed amended motion is dated prejudice the respondent in any way. On those grounds also, I find that this application lacks in merit. I do allow this application and do order that the amended Motion be filed within the next fourteen days. The applicant shall bear the costs of this application.

**Dated and delivered at Eldoret this 23rd day of June 2005.**

**JEANNE GACHECHE**  
**JUDGE**

Delivered in the presence of:  
No appearance for applicant  
No appearance for respondent