



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT KAKAMEGA  
Succession Cause 206 of 1989  
IN THE MATTER OF THE ESTATE OF GABRIEL ANDATI NANZUSHI  
(DECEASED)

JOHN FREDRICK ANDATI ..... PETITIONER  
A N D  
DAVID OYALO ANDATI ..... OBJECTOR  
PATRICK MULAMA ANDATI ..... APPLICANT

R U L I N G

This is a ruling on the preliminary point of law raised by Mr. Khamati, learned counsel for the Petitioner, when the application dated 26.1.2000 came up for hearing. His point was that the application was irregular. The application was by way of Chamber Summons premised on rules 59 and 73 of the Probate and Administration Rules under the Succession Act Cap. 160. It was Mr. Khamati's submission that the application was irregular and should ipso facto be struck out. He referred to rule 44 of the Probate and Administration Rules and Form 107 which show that an application for revocation of Grant must be by way of summons for revocation of Grant and not by chamber summons. Mr. Khamati was quite correct in his submission but I do not subscribe to the view that the error was fatal.

Mr. Onyando, learned counsel for the Objector opined that want of form should not be a ground for striking out. I am in agreement. However, where the procedure for making an application or for filing any proceeding is prescribed it is not in all cases where it is not followed that the court would excuse the flaw and decline to strike out the pleading.

I dismiss the objection.

**Dated at Kakamega this 14th day of July 2005**

**G. B. M. KARIUKI**

**J U D G E**