

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
SUCCESSION CAUSE NO.17 OF 2001

**IN THE MATTER OF: THE ESTATE OF BERND
GERHARD GUSTAN FURCHERTDECEASED.**

AND

IN THE MATTER OF: SABINR WEIST – APPLICANT

R U L I N G

The Applicant applies for removal of a caveat filed by persons who claim interest in the estate of the deceased. By the time the caveat was filed the grant was already issued. There is no application to revoke that grant.

But the grant is yet to be confirmed there being no application for confirmation. The application is opposed by caveators on the ground that the grant was issued on the disclosure of only a codicil not the full will. This evidence is not before the court there being no translation to that effect from the Germany language. The court notes that the caveat was filed on behalf of 2 caveators contrary to provisions of rule 15(3) Probate and Administration Rules.

This caveat is therefore invalid. The provisions of Succession Act and Rules thereof are to be construed strictly and there is no room to allow an invalid document to stand.

I also notice that there is no provision of discharging a caveat other than as provided under the rules. It the duty of Registrar to notify any dealings on the estate to the Caveator but by the time this caveat was filed the grant was already issued. It remains only to confirm the same. No application is filed to do so. However the Respondent was served with this application and he has only filed a replying affidavit objecting to the removal of the caveat. I am of the opinion that he is entitled to object because grant has not yet been confirmed. He may have a right to object to the confirmation. However the caveat as it is filed offends the rules of Probate as mentioned above.

In the circumstances I find the caveat invalid and I am inclined for this reason only to allow the application with Costs to the Applicant.

Dated at Mombasa this 25th Day of April, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE