



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KABARNET**

**PROBATE AND ADMINISTRATION MISC. SUCC. CAUSE NO. 4 OF 2019**

**IN THE MATTER OF THE ESTATE OF CHEWETICH CHESARO (DECEASED)**

**SOKOME CHESANG.....APPLICANT**

**VERSUS**

**SAMSON KIPYEGEN.....1<sup>ST</sup> RESPONDENT**

**DOMINIC KIMUGE.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. Rules 44 (3) and (4) of Probate and Administration Rules provide as follows:

*“(3) The summons and affidavit shall without delay be placed by the registrar before the High Court on notice in Form 70 to the applicant for the giving of directions as to what persons (if any) shall be served by the applicant with a copy of the summons and affidavit and as to the manner of effecting service; and the applicant, upon the giving of directions, shall serve each of the persons so directed to be served with a notice in Form 68, and every person so served may file an affidavit stating whether he supports or opposes the application and his grounds therefor.*

*(4) When the persons (if any) so directed to be served (or such of them as the applicant has been able to serve) have been served with a copy of the proceedings, the matter shall be placed before the High Court on notice by the Court to the applicant and to every person so served, and the Court may either proceed to determine the application or make such other order as it sees fit.”*

2. Pursuant to Rule 44 (3) and (4) of the Probate and Administration Rules, set out above, the Court considers that the persons named as purchasers of portions of the Estate ought to be served and the determination of questions of fact arising herein require viva voce evidence, as follows:

**Questions:**

1. Whether the applicant participated in Succession Cause KBT P & A No. 5 of 2014 and even executed the consent for confirmation of grant and was present in Court during the confirmation of Grant and previously when the Court visited the site of the Estate property to confirm the beacons marking each beneficiary's portion.

2. Whether the Administrator had at the time of his death executed some of the documents to facilitate the distribution of the Estate in accordance with the Confirmed Grant.

3. Whether the Estate property Baringo/Kewamoi/ “A”/107 was distributed in accordance with the confirmed Grant.

4. Whether the Applicant is in possession and occupation of her portion as per the Confirmed Grant in terms of acreage.

5. Whether the Respondents have intermeddled with the estate by sale of several parts to named persons as follows:

1. Pius Kamoo Ossen

2. Raymond Yator

3. Andrew Kipchumba Chebotee

4. *Jonathan Chemwetich Kiplagat*

3. The said alleged purchasers' interest in the suit property calls for the grant of opportunity to be heard before a determination on the issue of revocation/annulment of grant sought in the matter.
4. The determination of the application for revocation of grant shall, therefore, be deferred until after the said alleged purchasers have been served with the application and upon hearing *viva voce* of the questions of fact listed above.
5. Costs in the Cause.

*Order accordingly*

**DATED AND DELIVERED THIS 29<sup>TH</sup> DAY OF OCTOBER 2019.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearance**

M/S Mwaita & Co. Advocates for the Applicant.

M/S Chebii & Co. Advocates for the Respondents.