



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITALE**

**SUCCESSION CAUSE NO. 191 OF 2006**

**IN THE MATTER OF THE ESTATE OF KIPERENGE PARAREWA MIAPEN (DECEASED)**

**IN THE MATTER OF REVOCATION AND/OR ANNULMENT OF GRANT**

**BETWEEN**

**REBECCA CHEPKUTO KIPERENGE.....APPLICANT**

**AND**

**BENSON CHAMPU KEBERWO.....RESPONDENT**

**RULING**

1. The summons of revocation and/or annulment of the grant dated **16/4/2014** seeks orders that the grant of letter of administration issued to the respondent, **Benson Champu Kaberwo** on **23/7/2007** be revoked/annulled.
2. The applicant has deponed in her affidavit in support of the application that she is the daughter of the deceased, **Kiperenge Pararewa Miapen**. That the respondent is her brother. The applicant's complaint is that she was not consulted when the court was petitioned for the grant. That some of the beneficiaries had already benefited during the lifetime of the deceased as they had been bequeathed Land parcel **No. West Pokot/Siyoi/239 & 240**. It is further averred that land parcel **No. West Pokot/Siyoi/275** which is listed herein was given to the applicant and her sisters by the deceased save for three acres given to the respondent.
3. The application is opposed. The respondent swore a replying affidavit on 20/11/2015. It is stated in the said affidavit that the applicant lacks *locus standi*. That the proceedings herein were commenced by way of a citation dated 25/9/2006. That the citation was served as per the affidavit of service sworn on 20/12/2006. That the applicant filed an application dated 31/5/2008 seeking the revocation of the grant issued herein but the application was struck out for lack of *locus standi*. That the applicant thereafter filed an application dated 24/7/2008 which was withdrawn on 31/10/2008. That when the grant was confirmed on 13/11/2008, the applicant and her advocate were in court. That the grant was confirmed without any protest having been filed. That this application was filed seven (7) years after the grant was confirmed and the delay has not been explained. That the parcel of land the subject matter of these proceedings has since been transferred pursuant to the confirmed grant. That the persons listed in Form P&A5 were not beneficiaries as the deceased had during his lifetime given them land parcel **No. West Pokot/Siyoi/239 & 240**.

4. The application was canvassed by way of written submissions which I have duly considered.

5. The petition herein was filed in court on 7/2/2007. The petition reflects the applicant among the twelve survivors of the deceased. The petition reflects the assets of the deceased as land parcel **No. West Pokot/Siyoi/275**. The grant was issued on 23/7/2007 (Hon.J.A. Ochieng, J). Although a citation to accept or refuse letters of administration intestate had been filed earlier on within this file (**HC.Succ.191/2006**), the fate of the citation proceedings is not clear. The record has no entry which reflect whether the said citation was heard by the court and any orders made. No such orders have been exhibited by the respondent whose stand is that the citation was served on the citees. No consent by the beneficiaries was filed in court before the grant was issued. The grant was therefore issued irregularly without notice to the applicant and all the other persons beneficently entitled to the estate of the deceased. This was contrary to the **Provisions of 26(1) Law of Succession Cap 160 Laws of Kenya** which stated:-

**“Letter of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant”.**

6. A summons for confirmation was filed on 1/4/2008 and the grant was confirmed on 13/11/2008 (Hon N.R.O. Ombija,J). The court proceedings reflect the presence of Mr. Njoroge advocate for the petitioner and Mr. Ngeiywa advocate for the objector. Mr. Ngeiywa informed the court that he represented **Rebecca Chepkuto** (applicant) and another beneficiary by the name **Titus Kiberenge**. The court then proceeded to confirm the grant. There is no indication on the record of the presence of any of the beneficiaries. There was no consent filed showing the mode of distribution.

7. **The proviso of 71(2) of the Law of Succession Cap 160 Laws of Kenya** stipulates as follows:-

**“Provided that, in all cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to respective identities and shares of all persons beneficently entitled; and when confirmed the grant shall specify all such persons and their respective shares”.**

8. With the foregoing observations, I hold that the proceedings herein were defective in subsistence. **S.76 of the Law of Succession Act Cap 160 Laws of Kenya** provides as follows:-

**“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application any interested party or of its own motion:-**

**(a) That the proceedings to obtain the Grant were defective in the substance”.**

9. Regarding the other issues raised on whether the applicant has *locus standi*, the applicant is a daughter of the deceased and therefore one of the persons beneficently entitled to the estate of the deceased. The applicant therefore has the *locus standi* to bring the application.

10. Turning to the issue whether the property in question has changed hands, **Section 93(1) of the Law of Succession Act Cap 160 Laws of Kenya** provides as follows:-

**“A transfer of any interest in immovable or movable property made to a purchase either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act”.**

In the case at hand, no documents have been exhibited in court as evidence of any transfer of the property herein.

11. In the upshot, the application has merits and I allow the same. Costs in cause.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Kitale** this 26th day of May, 2016.

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**B. THURANIRA JADEN**

**JUDGE**