



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CASE NO. 36 OF 2020 (OS)

RAKAU OLE NESEDER AND

MERITEI OLE KATERI (suing as administrators of the Estate of

KILULI OLE NESEDER alias OLE NESEDER (deceased).....PLAINTIFFS

-VS-

SHAPANISHA MOILO LENGARAS.....1ST DEFENDANT

OSILALEI GROUP RANCH.....2ND DEFENDANT

LAND ADJUDICATION AND SETTLEMENT OFFICER.....3RD DEFENDANT

THE HON. ATTORNEY GENERAL.....4TH DEFENDANT

NADUPOI ENE RISA.....5TH DEFENDANT

MEMPEI KATERI NESEDED.....6TH DEFENDANT

MAJALIWA OLE KATERI.....7TH DEFENDANT

KIRAKA OLE NESEPER.....8TH DEFENDANT

RULING

This ruling is on the Preliminary Objection raised by the 3rd and 4th Respondents dated 22/7/2020 which is to the effect that the Plaintiffs herein namely Rakau Ole Neseder and Meritei Ole Kateri lack capacity to institute their proceedings on behalf of the Estate of the late Kiluli Ole Neseder as the grant of letters of administration was revoked on 30th July, 2019.

For the above reasons, the 3rd and 4th Defendants pray that the suit be struck out with costs.

The Plaintiffs' Counsel filed written submissions dated 28/9/2021 in which he urges that what was revoked was not the grant but the Certificate of Confirmation of Grant. In further support of this proposition, counsel cited the case of *the Estate of Joel Cheruiyot Ronoh (2016) eKLR* which expounded on the difference between a Grant of Representation and a Certificate of Confirmation.

On the other hand, counsel for the 3rd and 4th Defendants urged in her submissions dated 11/6/2021 that what the Lower Court revoked was the Grant not the Certificate of Confirmation.

I have considered the Preliminary Objection in its entirety including the grounds, submissions, the authorities relied upon and the entire record.

Section 76 of the **Law of Succession Act (cap 160)** and **Rule 44** of the **Probate and Administration Rules** provide for the Revocation or Annulment of a Grant and not the Certificate of Confirmation.

The authority cited by the Plaintiffs' Counsel i.e *the Estate of Joel Cheruiyot Ronoh (2016) eKLR* succinctly put it that a Certificate of Confirmation of Grant can never be revoked, only a grant can.

I uphold the Preliminary Objection dated 22/7/2020 and strike out the suit on the ground that the Plaintiffs have no capacity to file it. Costs to the Defendants.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 18TH DAY OF JANUARY, 2022.

M.N. GICHERU

JUDGE