



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KITALE**  
**SUCCESSION CAUSE NO. 68 OF 2009**  
**IN THE MATTER OF THE ESTATE OF KIPTOO KITANY (DECEASED)**  
**SOLOMON KIPRUGUTKOYOPEI ..... PETITIONER**  
**VERSUS**  
**CHPOCHEPOS WARIKA .....APPLICANT**  
**R U L I N G**

1. The summons for revocation of grant dated 1st May, 2014, were taken out by **Chepochepos Warika** (herein applicant) against the petitioner **Solomon Kiprugut Koyopel**, who was granted letters of administration respecting the estate of the late **Kiptoo Kitany**, on the 27th May, 2010.

The necessary petition for grant of the letters of administration was made on 4th October, 2008. A total of sixteen (16) people were listed as beneficiaries including three (3) widows among them the applicant.

A portion of land described as **West Pokot/Siyon A/346**, was listed as the only asset of the deceased.

Summons for confirmation of the grant were taken out by the petitioner on 2nd August, 2012 and on the 11th October, 2012, a certificate of confirmation of grant was issued by the court.

2. In the application for confirmation the petitioner was listed as a child of the deceased among others. The three widows of the deceased were also listed as children of the deceased. On the 27th February, 2014, the certificate of confirmation of grant issued on 11th October, 2012, was rectified to accommodate persons left out in the initial mode of distribution.

In his supporting affidavit for rectification dated 6th January, 2014, the petitioner averred that the deceased was his father.

On 1st August, 2014, the applicant filed the present application for revocation of the rectified certificate of confirmation issued to the petitioner on 27th February, 2014.

3. The grounds for the application are basically that the petitioner is not a beneficiary of the estate of the deceased and that the consent of the applicant was not sought by the petitioner before and after the application for the grant was made.

These grounds are supported by the facts and averments contained in the applicant's supporting affidavits dated 1st August, 2014 and 27th May, 2015.

A replying affidavit in opposition to the application was filed by the petitioner on 5th November, 2014.

Both parties essentially relied on their respective affidavits at the hearing of the application by way of oral evidence.

4. In essence, the applicant was able to establish without dispute that the deceased had five (5) wives and that the petitioner was only a nephew of the deceased as his father was a brother to the deceased. She indicated that she was the third wife of the deceased and contended that the grant was obtained by the petitioner without her consent. She also contended that the grant was obtained by misrepresentation on the part of the petitioner. Her position was more or less supported by her two witnesses, **Jackson Kibor Kiptoo (PW2)** and **Joel Kokui Terer (PW3)** but in his evidence, the petitioner indicated that he obtained the grant pursuant to a family agreement and with full participation of the applicant. His witnesses, **Judith Asimiyu Kiptoo (DW2)** and **Benjamin Pyatich Koyopel (DW3)** relied on their respective written statements dated 10th February, 2015, in supporting his objection to this application.
5. Under Section 76 of the Succession Act a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the proceedings to obtain the grant were defective in substance or if the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case among other factors.

Herein, the applicant contends that the proceedings to obtain the grant were defective for want of her consent as one of the widows of the deceased. She also contends that the petitioner concealed material facts by representing himself as a beneficiary of the deceased's estate.

6. The record of the court lends credence to the applicant's contention in that the letter from the chief dated 15th March, 2009, portrayed the petitioner as a son of the deceased and so did the petition for letters of administration dated 4th October, 2008. The summons for confirmation of the grant dated 2nd August, 2012, also portrayed the petitioner as a child of the deceased.

The consent to the confirmation of the grant dated 2nd August, 2012, was however not signed by two widows including the applicant. This clearly indicated that the proceedings to obtain the grant were defective in substance and that the grant was obtained by misrepresentation and concealment of material facts on the part of the petitioner whose objection to the present application cannot therefore be sustained.

7. The family meeting alluded to by the petitioner was irrelevant for purposes of his petition for the grant when it was apparent that he was nowhere near the order of priority for those entitled to petition for the grant. His application for the grant was therefore a false and fraudulent transaction intended to interfere with the proper and lawful administration of the estate for a just and proportionate distribution of the estate property.

Consequently, the grant issued to him on 27th May, 2010, and confirmed on the 11th October, 2012, is hereby revoked to allow for a fresh application of the same by the surviving widows of the deceased.

Ordered accordingly.

**J.R. KARANJA**

**JUDGE**

**19/8/2015**

**Read and signed this 19th day of August,**

**2015 before Mr. Barongo holding brief  
for Mr. Kaosa for Applicant and M/s Arunga  
for Respondent.**