



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO.224 OF 2007

IN THE MATTER OF THE LATE ABRAHAM CHERUIYOT TONUI - DECEASED)

ROSE CHEPKIRUI TONUI.....1ST PETITIONER/RESPONDENT

CHERUIYOT JACOB.....2ND PETITIONER/RESPONDENT

VERSUS

ISAAC KIPKEMOI CHERUIYOT.....APPLICANT

R U L I N G .

1. This Ruling is in respect of the Application for revocation of grant dated 25th October, 2011. Directions were taken on 12th May, 2014 to the effect that the application be determined by way of oral evidence.

2. Both parties went ahead and filed witness statements.

Thereafter the matter was fixed for hearing on 16th July, 2015. When the matter came for hearing both Counsel agreed to have the matter disposed of by way of written submissions.

3.The issue for determination is whether Land Parcel No. **Kericho/Kipsonoi/1351** formed part of the deceased's estate or not.

There is an allegation that the land was sold by way of public auction on 10th June, 2003 by National Bank Ltd.

The same title being in the deceased's name was used to borrow money from Barclays Bank of Kenya. Thereafter the land was transferred to the Petitioners/Respondent here.

4. I have looked at the witness statements filed herein. There is no statement from officers of the two Banks that were involved in the above mentioned transactions. Their evidence is material in the issue before this Court.

5. What both Counsels are telling this Court vide their submissions is actual evidence which should be tested on cross examination. It is only oral evidence as earlier directed on 12th May, 2014 which will assist the court in resolving this dispute.

6. In as much as Mr. Orina indicated to the Court on 16th July, 2015 that the Applicant is recognized as a son of the deceased, in his submissions he says the Applicant is not a son as per the Kipsigis Customary

Law on divorce. My view is that, this is evidence which must come from the witnesses and has to be tested through cross-examination.

7. From the record herein I do note that there have been complaints of delay of this matter. That notwithstanding I do find that this matter requires evidence to be adduced to enable the court arrive at a just determination of the dispute herein.

8. I therefore vacate the Orders issued on 16th July, 2015 for the matter to be disposed of by written submissions.

I also set aside the order of 6th October, 2015 giving the Ruling date of 10th November, 2015.

I direct that this matter be given the earliest hearing date available.

The Applicant to avail all his witnesses on that day.

Orders accordingly.

DELIVERED, SIGNED AND DATED THIS 21ST DAY OF DECEMBER, 2015.

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H.I.ONG'UDI

JUDGE