



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**

**SUCCESSION CAUSE NO.126 OF 2005**

**IN THE MATTER OF ESTATE OF THE LATE REBECCA CHEPKURUI TURGAT-  
DECEASED**

**LEAH CHEROTICH SOI.....PETITIONER**

**AND**

**TECLA CHESANG REBECCA.....OBJECTOR**

**JUDGMENT**

When **Rebecca Chepkurui Turgat** died, **Leah Cherotich Soi**, hereinafter referred to as the Petitioner, successfully applied to succeed her. On 4th October 2005, the Petitioner was given a grant of letters of administration intestate in respect of the Estate of Rebecca Chepkurui Turgat, deceased. When **Tecla Chesang Rebecca** hereinafter referred to as the Objector, learnt of this development, she took out the summons for revocation of grant dated 14th December 2005 in which she applied for the following orders:

- i. **The same was obtained fraudulently by means of untrue allegation.**
- ii. **The proceedings to obtain the grant were defective in substance.**
- iii. **The Petitioner has failed to proceed diligently with the administration of the estate.**

The Petitioner resisted the aforesaid summons by filing the replying affidavit sworn on 6th November, 2006.

At the close of pleadings it was directed that the dispute be disposed of by oral evidence. A total of five witnesses testified in support of the Objector's application for revocation of grant while three witnesses were summoned by the Petitioner to testify in support of her case.

Let me start by examining the evidence. It is the evidence of **Tecla Chesang Rebecca** (P.W.1), that the Petitioner had failed to disclose that the late Rebecca Chepkurui Turgat had married Tecla Chesang Rebecca as her second wife under the Kipsigis Customary Law and Rites, hence she was entitled together with her children to inherit the deceased's estate. For the above reason, this court was urged to revoke the grant. P.W.1 further averred that her marriage with the deceased in 1987 was witnessed by **Stephen K. Ruto** (P.W.3) and Mr. Chepkwony which took place in the house of Mr. Chepkwony. The Objector further stated that the deceased subdivided her land and shared out between her two wives. It is the Objector's evidence that the deceased put up a house for her and that she bore four children for her and that upon her death the deceased's body was interred next to the Objector's house. P.W.1 stated that the deceased paid four cows as dowry to her parents. **Samuel Langat** (P.W.2), the Objector's father stated

that the Objector was married to the deceased as her second wife. P.W.2 confirmed that he received four (4) cows out of the agreed seven (7) from the deceased as payment for the dowry of the Objector. Stephen Ruto (P.W.3) corroborated the evidence of P.W.1 and P.W.2 and further stated that he witnessed the marriage ceremonies and rituals take place, signifying that the Objector got married to the deceased. **John Arap Langat** (P.W.4) told this court that he was summoned by the late Rebecca Chepkurui Turgat to witness the subdivision of her land into two equal portions in his capacity as a village elder. P.W.4 said 4.5 acres each were given to the Petitioner and the Objector.

On the other hand, it is the evidence of Leah Cherotich Soi, the Petitioner herein, that the Objector was employed as a househelp of Dina, the deceased's daughter. The Petitioner further averred that at no time was any ritual performed to solemnize the marriage between the Objector and the deceased.

I have considered the evidence from both sides and it is clear in my mind that despite the Petitioner's spirited attempt to discredit the evidence tendered by the Objector, I find the evidence of the Objector and her witnesses to be cogent, consistent and truthful. What has emerged is that the Petitioner and the Objector were not having a cordial relationship. I believe the evidence of P.W.1, P.W.2 and P.W.3 that a woman to woman marriage between the Objector and the deceased took place and that all the rituals and ceremonies giving rise to a marriage were fulfilled. I am convinced that the marriage between the Objector and the deceased was within the knowledge of the Petitioner but she chose not to acknowledge that reality. It would appear the Petitioner wondered loudly how could the deceased marry another wife yet she had brought forth children of both sexes to the deceased. The Petitioner's act of failing to acknowledge that the Objector has an interest over the estate of Rebecca Chepkurui Turgat, deceased, constitutes material non-disclosure which may lead to the revocation of the grant. Consequently, I find the summons for revocation of grant to be well founded; I grant the Objector the order. However, it is not in dispute that the deceased married both the Petitioner and the Objector as her first and second wife respectively. I do not want to leave the estate in limbo. Pursuant to the provisions of **Rule 73** of the **Probate and Administration rules** I hereby exercise my discretion by ordering that a fresh grant be issued in the joint names of **Leah Cherotich Soi** and **Tecla Chesang Rebecca**. The duo may jointly or separately apply for the confirmation of grant notwithstanding that six (6) months will not have lapsed from the date of this decision. Since those involved are co-widows, I direct that each one of them meets her own costs.

**Dated, Signed and delivered in open court this 30th day of May, 2014.**

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**J.K.SERGON**

**JUDGE**

**In the presence of:**

Mr. Koko holding brief for Mr. Orina for Petitioner

Mr. Mutai for Objector