



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO. 20 OF 2010

**IN THE MATTER OF THE ESTATE OF THE LATE CHESENGENY SANG ALIAS
CHESENGENY ARAP SANG ALIAS KIPRUTO SANG (DECEASED)**

AND

JOSHUA MARITIM TAMOGE.....APPLICANT

VERSUS

CHELULE ARAP TAMOGE.....PETITIONER

RULING

This decision is the outcome of the summons for revocation of grant taken out by Joshua Maritim Tamoge, the applicant herein, dated 11th May 2012. The applicant is seeking for the revocation of the grant in respect of the estate of Chesengeny Sang alias Chesengeny Arap Sang alias Kipruto Sang, deceased issued on 18th October 2010 to Chelule Arap Tamoge the Petitioner herein.

The summons is supported by the applicant's affidavit. The petitioner filed a replying affidavit he swore to oppose the summons.

When the summons came up for inter-parties hearing learned counsels appearing in the cause agreed to have the application determined by affidavit evidence and by written submissions.

I have considered the rival written submissions plus the material placed before this court. The gist of the applicant's complaint is that the Petitioner fraudulently obtained the grant. It is alleged that the applicant and other beneficiaries were not notified of the filing of the Petitioner for letters of administration hence no consent was given. The Applicant further averred that the certificate of death used was forged. According to the applicant the deceased passed away on 8th June 1972 as opposed to 25th April 1979. The Petitioner on the other hand is of the view that the summons lacks merit hence it should be dismissed. He stated that the Applicant and other beneficiaries signed the consent authorizing him to apply for the grant.

He further averred that the deceased's family made prior to the filing of the petition. I think the question which this court has been asked to determine is whether the grant was lawfully obtained. I have already stated that the Applicant is complaining that the deceased's family were not consulted by the Petitioner before filing the Petition. He says he was not notified. The Petitioner has responded to those accusations by filing a replying affidavit which clearly show that the deceased's family actually met on 30th August 2008 where upon they resolved to authorize the Petitioner to file these proceedings. The Applicant has not deemed it fit to controvert this assertion.

It is also clear that the Applicant herein signed the consent to authorize the Petitioner to file these proceedings. It is therefore obvious that the Applicant's allegations lacks merit.

In my view I think the summons for revocation of grant was meant to delay the conclusion of this cause. I do not understand why the Applicant decided to lie under oath. He participated in family meetings to authorize the institution of these proceedings. He cannot be allowed to turn around and deny what he had authorized to be done. The Applicant has stated that the death certificate used in these proceedings was forged. I do not think so. What is apparent is that there are two death certificates both were issued by the Kericho District registrar of births and deaths.

In both cases, the name of the informant was not mentioned. The registrar simply stated that the informant was a relative.

In sum I see no merit in the summons. The same is dismissed with each party meeting his or her own costs.

Dated, signed and delivered this 20th day of September 2013.

J.K.SERGON

JUDGE

In open court in the presence of

Mr.Mutai holding brief for Mr. Orina for Petitioner

N/A Mr. Maengwe for Objector