



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 66 OF 2009**

**IN THE MATTER OF THE ESTATE OF THE LATE LOISE TAPKIGEN MALIT ALIAS TAPKIGEN W/O MALIT-(DECEASED)**

**AND**

**PRISCILLA MALIT.....APPLICANT**

**VERSUS**

**EMILY CHEPKOECH.....RESPONDENT**

**RULING**

The subject matter of this ruling is the Summons for revocation of grant dated 3rd June 2013 taken out by **PRISCILLA MALIT** hereinafter referred to as the Applicant. The summons was opposed by **EMILY CHEPKOECH MALIT**, hereinafter referred to as the Respondent by filing a replying affidavit she swore on 27th August 2013.

In the Summons, the applicant sought for inter-alia:

1. **THAT this application be certified urgent and heard exparte in the first instance.**
2. **THAT a temporary stay of execution of the Certificate of Confirmation of Grant made on the 18th day of April 2013 and issued on 9th day of May 2013 pending inter-parte hearing.**
3. **THAT the Certificate of Confirmation of Grant made on the 18th day of April 2013 and issued on 9th day of May 2013 be revoked and/or annulled on the grounds:**

**(a) THAT the proceedings to obtain the Certificate of Confirmation of grant were defective in substance.**

**(b) THAT the Certificate of Confirmation of grant was obtained without the consent by all parties, or by concealment from the court of something material to the case.**

It is the submission of the Applicant that the Respondent caused the grant to be confirmed without her knowledge and consent. She pointed out that the consent relied upon was not signed by all the beneficiaries hence the mode of distribution was not agreed upon. The Respondent opposed the Summons claiming the same is a delaying tactic by the Applicant. She averred that all the beneficiaries were in court when this court made the order confirming the grant and after they verbally agreed that the distribution be done as per the consent filed in court.

After a careful consideration of the rival submissions it is clear in my mind that the Respondent does not

deny that the consent dated 22nd August 2011 was not duly executed by all the beneficiaries except for the Respondent. Those named in the consent are:

1. **Philip Kiptanui Chepkwony**
2. **Johstone Kipsigei Chepkwony**
3. **Emily Chepkoech Malit**
4. **Kennedy Chepkwony**
5. **Lily Cherop**
6. **Caleb Chepkwony**
7. **Bernard Chepkwony**
8. **Erick Chepkwony**
9. **Cherotich Malit**

When the cause came up for confirmation of grant before Justice Mutava, the following confirmed having agreed to the proposed distribution in the consent:

1. **Emily Malit**
2. **Joshua Chepkwony**
3. **Philip Chepkwony**
4. **Vincent Kiprotich**
5. **Benard Kipyegon**

It is obvious that there was no consensus in the mode of distribution. The Applicant and other beneficiaries did not agree neither were they consulted. I am in agreement that the grant was confirmed on the basis of a misrepresentation of facts. It was represented to court that all the beneficiaries had agreed on the mode of distribution stated by the consent dated 22nd August 2011. That was not true. Consequently, the certificate of confirmation of grant made 18th April, 2013 and issued on 9th May 2013, is revoked. The parties should file a fresh application for confirmation of grant. Since the dispute involves close family members, I direct that each one of them meets his or her own costs.

**Dated, Signed and delivered this 22nd day of November, 2013**

**J.K.SERGON**

**JUDGE**

In open court in the presence of all the parties

Mr. Korir- court clerk