



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**PROBATE AND ADMINISTRATION CAUSE NO. 137 OF 1997**

**IN THE MATTER OF THE ESTATE OF KIPKOSGEI ARAP ROP – DECEASED**

**R U L I N G**

This Summons is for the annulment of the Certificate of Grant of Confirmation made on the 5<sup>th</sup> November, 1999. It is brought under section 76 of the Law of Succession Act and Rule 44 of the Probate and Administration Rules on the grounds that the proceedings to obtain the Grant were defective in substance and confirmation of the Grant made with concealment from the court of material facts. That the same was obtained fraudulently by the making of a false statement by some of the applicants and that those to whom the Grant was issued have failed to proceed diligently with the administration of the estate and for those reasons the Grant has become useless and inoperative. The summons is taken out by Flora Too a daughter of the late Kipkosgei Arap Rop. She is supported in her application by two widows of the deceased Priscilla and Salome. And their case is that one Rosaline Chebusunde Tuwei was not a child of the deceased herein and should therefore not inherit him. That she was the wife of the deceased's wife Martha under the Nandi woman to woman customary marriage and therefore she should inherit the share given to her husband Martha and not directly from the deceased herein. That of Martha's share of 40 acres the said Rosaline was given 17 acres and the applicant 17 which was the 34 acres left out of the 40 acres after 6 acres were sold to various persons. The further case is that Rosaline and her children who are also not heirs of the deceased took the whole 34 acres thereby depriving Flora of her rightful inheritance from her father.

Rosaline's case is that she is in possession and if the Grant is nullified then the entire estate has to be redistributed. That the estate herein was distributed to the deceased's various houses and Martha's 40 acres went to Rosaline and her children and Flora Too was not considered as she was married away and has land at her husband's home. That under the Nandi woman to woman marriage the children born are the children of the husband of the woman husband who had no sons and hence Rosaline's children are the children of the late Kipkosgei Arap Rop and are rightful heirs and they were dependants. That Flora's claim was not on the estate of her late father but on that of her late mother Martha and so she should take out a Grant of representation of Martha's estate. The applicant Flora Too was faulted for waiting for her mother to die and only then raise issues.

Arguments by both counsel before court in support of the rival positions were made and in addition to

what I have summarized above the further case for the objector was given as that the distribution was wrong as regards Martha's 40 acres and that she should be reconsidered. Both counsel agreed to file written submissions but only the counsel for Flora Too did so. These submissions were to the effect that the applicant's mother Martha was given 40 acres out of the deceased's parcel of land known as Moiben/Moiben/Block 6/13. That out of her 40 acres Martha then distributed the same as 17, acres to Flora Too this applicant and Rosaline the respondent 17 acres 6 acres having been sold during Martha's lifetime. That is the accepted dispute. Contrary to that distribution by Martha the court was misled at confirmation of the Grant whereat Rosaline was given 25 acres and the part of the rest of the land went to non-beneficiaries of the late Kipkosgei Arap Rob. That list of non-beneficiaries excluded the applicant and other direct and true heirs of the late Kipkosgei Arap Rob and Martha's name is also missed out in the confirmation of Grant.

The land parcel known as Moiben/Moiben Block 6/13 belonged to the deceased Kipkosgei Arap Rob who died intestate on the 3<sup>rd</sup> August, 1983. His widows Martha Sirma Murei, Salome Jebor Murei, Christine Chepsat Murei and sons David Kipkorir Murei and Stephen Some Barno were granted the Grant of Letters of Administration intestate which was later confirmed on 20/02/1996 and later annulled and a fresh confirmed Grant was issued on 5<sup>th</sup> November, 1999. The mode of distribution in the latter Grant is the subject of this application.

It is an admitted fact both by counsel for the applicant and for the interested party that the deceased's parcel of land measuring 193 acres was so distributed as to give the house of Martha Sirma Murei the deceased's first wife 40 acres. The point of departure is how the distribution of that portion to Martha came to be different. The late Martha was alive during November, 1999 when the confirmation of Grant was done but she was old as evidenced by affidavits on record. Whether or not she participated in that distribution is not clear from the record. What again is clear is that such distribution gave 40 acres to people related to the late Martha in that the respondent (Interested party) is the late Martha's wife. She took 25 acres with the remaining 15 acres going to her children. It is not disputed that the applicant was the late Martha's only child. No other heir of the deceased Kipkosgei Arap Rob apart from this applicant has complained. In these circumstances and considering the lapse of time since the confirmation of Grant in 1999, it is my considered view that nullifying the Grant would disturb persons not affected by the dispute in Martha's house. Yet the dispute that has arisen between Martha's wife Rosaline and Martha's daughter Flora has to be resolved. It was not shown who authored the distribution list that was in the confirmed Grant of November, 1999 but as already noted the complaint only arises in the house of Martha. In the circumstances of this cause where the applicant clearly does not claim against her father's estate but only as against the share given to her Martha's house it is expedient to order that the applicant directs her claim as under her mother's estate. It is truly accepted that her mother got 40 acres from her late father. That the applicant does not quarrel with that at all. What she questions is how her mother's share of 40 acres more particularly 34 acres, was distributed. That in my view should not destabilise the entire estate and thereby affect Kipkosgei Arap Rob's heirs who have no complaint. The 40 acres given to Martha immediately became Martha's estate and consequently the logical thing for the applicant to do is to pursue all those who took her 17 acres of her mother's estate. In the result I do not find merit in this application and I dismiss it with costs.

**DATED AND SIGNED AT ELDORET THIS 31<sup>ST</sup> DAY OF DECEMBER, 2010.**

**P.M. MWILU**

**JUDGE**

**SIGNED AND DELIVERED AT ELDORET THIS 24<sup>TH</sup> DAY OF JANUARY, 2011.**

**F. AZANGALALA**

**JUDGE**

**In the presence of;**

Advocate for Applicant  
Advocate or Respondent  
Court Clerk

**F. AZANGALALA**

**JUDGE**