



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT KITALE.

SUCCESSION CAUSE NO. 186 OF 2005.

WILLIAM KIPROTICH MAHINDI :::::::::::::::::::::::::::::: DECEASED.

AND

**EVERLYNE CHEPKORIR WILLIAM)
MESHACK K. ROTICH) :::::::::::::::::::::::::::::: PETITIONERS.**

VERSUS

WILSON KOECH :::::::::::::::::::::::::::::: OBJECTOR.

R U L I N G.

1. The late William Kiprotich Mahindi (hereinafter referred to as the deceased) died intestate on 1st July, 2002. **Everlyne Chepkorir William**, the widow of the deceased petitioned for the letters of administration on 19th September, 2005. The deceased was survived by the petitioner and 8 children. The children who were of the age of majority gave their consents for the letters of administration to be granted to the widow and **Meshack Kiptum Kiprotich**. The administrators were issued with the letters of administration on 14th March, 2006.
2. On 27th February, 2007, **Wilson Koech** filed the summons for revocation of the grant on the grounds that the proceedings to obtain the grant were defective and the grant was obtained fraudulently by making of a false statement and concealment from court of material facts. The applicant also sought for an order that the petitioner be restrained from dealing with 9 ½ acres of land in LR. Parcel No. Kitale Municipality Block 15(Koitobos) 4 which is currently being occupied by **Sila Rotich**. This application is supported by the grounds that the applicant is entitled to 10 ½ acres of land from the above plot which he purchased from the deceased.
3. According to the applicant he contended that the administrators were aware of the applicant's claim because it was deliberated upon by both family members on several occasions and the applicants annexed the minutes of the meetings where it was held that the applicant should get 10 ½ acres. After those deliberations, the applicant sold 8 acres to **Sila Rotich** who moved into the parcel of land with the approval of the deceased, he took possession and fenced it. However, the administrators have been harassing the said **Sila Rotich**.
4. The application for injunction was heard by **Justice Ochieng**, who made certain orders. That prompted the applicant to seek an order of review, although the Judge declined to review his earlier orders made on 23rd April, 2007, he granted an order of stay of execution of the said orders. The matter was subsequently handled by **Justice Ombija** who ordered there be a status quo of the suit premises thus the applicant was supposed to continue cultivating 8 ½ acres of the suit premises until the determination of the petition. The matter continued taking twists and turns when the applicant filed another application dated 29th September, 2010 seeking to commit the administrators of the deceased's estate to civil jail for failing to obey the order to maintain the status quo.
5. This being a succession matter, this court was concerned that the matter was becoming more and more protracted and acrimonious and the focus of matter, that is the determination of the summons for revocation of the grant filed by the applicant was getting eclipsed by other side matters. The court clarified the orders of 2nd March, 2010 and gave directions that the main summons for revocation be heard. Parties were given leave to file their affidavits if (any) for hearing on 19th May,

2011. However, on that day counsel for the applicant did not attend court. **Mrs. Kitonyi** learned counsel for the administrators requested that parties do file written submissions, the parties have done so as each has made arguments in support of their respective positions.

6. Going through the submissions and the application for revocation, the issue raised is whether the administrators who are the widow and son of the deceased concealed to this court material fact when they applied for letters of administration. The applicant is also claiming to have purchased 10 acres of the suit land and he annexed minutes of meetings held before the elders, that was before the deceased passed away where it was resolved that the applicant should get 10 ½ acres. This is a matter of contract between the applicant and the deceased. It cannot be determined in a succession cause. The applicant is supposed to file a civil suit against the administrators of the deceased's estate to pursue his claim for land.

7. This being a Probate and Administration cause, it is directed by the provisions of Law of Succession Act. The law provides who should be granted the letters of administration. Section 66 of the Law of Succession Act provides the person(s) who have priority to be granted with the letters of administration. The 1st priority goes to the surviving spouse with or without association of the beneficiaries. The applicant was not a beneficiary or a dependant of the deceased. He had entered into a contract of sale of land or a change of land with the deceased. This is not the correct forum for the applicant to ventilate his claim.

8. Introducing disputes of civil nature in this matter will not be convenient and it will not be in the interest of justice. Accordingly, I disallow the application for revocation. There is no justification for widow and the son of the deceased to have included the applicant in the petition. Obtaining the letters of administration provided the administrators with the capacity to be sued in order to discharge the responsibilities (if any) which the deceased died before fulfilling.

Due to the nature of this matter, apparently the applicant is the deceased brother in law or the petitioner's brother I am hesitant to award costs. Each party should bear their own costs.

Judgment read and signed this 29th day of July, 2011.

**MARTHA KOOME.
JUDGE.**