



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

MISCELLANEOUS APPLICATION 54 OF 2004

SUSAN CHEBICH BARCHIBEIAPPLICANT

VERSUS

CHARLES KIBIWOT BARCHIGEI.....RESPONDENT

RULING

This is an application brought under the provisions of Rules 59 and 73 of the Probate and Administration Rules cap.160 of the Laws of Kenya. It prays for an order of the court directed at the Nandi District Land Registrar to rectify the Register of land parcel **LR.NO.NANDI/CHEPTIL/173** by deleting the name of Charles Kibiwot Barchigei as proprietor and replacing it with that of the late Jonathan Kipkoros Barchigei. It is brought on the grounds that the said Charles Kibiwot Barchigei used a grant issued by the Kapsabet court in succession cause, PM P&A.No.78 of 1995 to transfer the above said parcel of land from the name of Jonathan Kipkoros Barchigei to himself and as the said Grant was revoked by this court the Respondent herein has no business having his name remain as the registered owner of the said parcel of land. The Applicant requires the transfer of the land so that he can commence meaningful succession proceedings in respect of the estate of the late Jonathan Barchigei who is the rightful owner of the land the subject matter hereof. The Applicant has sworn the supporting affidavit.

In opposing the application the Respondent swore a Replying affidavit stating that he filed a Notice of Appeal against the revocation of the Grant and as such the orders sought ought not to issue. The Respondent describing himself as the administrator of the estate of the late Jonathan Kipkoros Barigei prayed that the Land Register be not changed to remove his name as the registered owner of the parcel of land known as LR.NO. Nandi/Cheptil/173.

It is a matter admitted by all parties as a fact that this court did revoke the Grant. The Respondent herein then filed a Notice of Appeal to the court of Appeal on 14th March 2006. To date he has done nothing towards processing that appeal, at least he showed this court nothing to that end. And in any event that Notice of Appeal cannot by itself operate as a stay of execution of the orders of this court. And the Respondent is by no means the administrator of the estate of the deceased herein the Grant having been revoked. In light of the revocation of the Grant this court hereby issues an order directed at the Land Registrar Nandi to rectify the Register of land parcel No. LR. No. Nandi/Cheptil/173 by deleting the name of Charles Kibiwot Barchigei and restoring the names of Jonathan Kipkoros Barchigei. The costs of this application will be borne by the Respondent.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 25TH DAY OF MAY 2010

P.M.MWILU

JUDGE

IN THE PRESENCE OF

Machio - Advocate for the Applicant

Ms. Wangila - Advocate for the Respondent

Andrew - Court clerk

P.M.MWILU

JUDGE