



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT KERICHO

Succession Cause 100 of 2002

IN THE MATTER OF THE ESTATE OF

KIPKOSKE ARAP TUIMISINGDECEASED

AND

HENRY KIPKURUI ROTICH PETITIONER

RULING

Court Direction

I: Procedure

1. Kipkoske Arap Tuimising passed away at a ripe old age of 98 years on 20th February, 1994.
2. His son, Henry Kipkurui Rotich obtained a death certificate and filed this law of succession case No. 10/2002 on the 1st August, 2002. As the deceased died intestate he correctly filed forms P&A 80 Petition, 11, 12, 57 and P&A 5. Unfortunately he named himself and two others being Charles Kirui and Hillary Tonui as being the only surviving person to the deceased. No relationship of these persons nor their ages had been described on form P&A 5.
3. Letters of grant intestate was granted on 25th November, 2002 (*Visram J*).
4. The applicant Tecla Chesang Tuimising filed an application being summons for revocation of grant under **Section 76** and **rule 44** of the Law of **Succession Act Cap 160**. The reasons for seeking the annulment of the grant was that she was indeed the fourth widow of the deceased having been married in 1978. She now has minor children and they had never been provided for. That the land in dispute had physically been sub-divided into two portions by the deceased being land parcel **Kericho/Chemagei/1328**.
5. It seems that the Petitioner had failed to disclose that the applicant existed. In effect there were others involved and other parcel of land.
6. The Deputy Registrar of the High Court at Kericho in 2005 failed to issue form P&A 70 in order that the revocation proceedings may be undertaken. Instead, the parties before then had appeared to court and on 30th October, 2003 the court (*Apondi J*) enjoined a new administrator to the administration. By 28th September, 2004 the Petitioner had transferred land from himself to a sub – division before the confirmation of grant. Investigation as to this was carried out.

7. On 12th May, 2006 the parties appeared before Koome J who gave directions that they agreed to the issue of division of the assets by filing an affidavit. By now a new grant was issued without revoking the first grant issued by Visram J on the 22nd November, 2002. The new grant was in the name of Richard Rotich, Philip Rotich, Henry Kipkorir Rotich and Tecla Chesang Tuimising (*the applicant*) dated 12th June, 2007. It was a grant that was never collected by the parties.

8. The parties now come to seek directions. What are they to do next having reached a point of no agreement?

II: Court Directions

9. This matter has been a subject of litigation with the lands disputes tribunal/elders. I have not read the proceedings but the outcome by the elders is what the applicant wishes to occur.

10. Once any party files for revocation or annulment proceedings the procedure ought to be under **Section 76** of the **Law of Succession Act** and **Rule 44** of the **Law of Succession** rules for **form 70** to be issued to the Applicant. Directions taken as to who should be served with the revocation proceedings together with form **P&A 68** requesting the said parties concerned to file a replying affidavit stating whether they accept or oppose the application for revocation. The court on reading both filed papers determined the same.

11. I note the irregularity in this file being in existence of two grants. The parties are unable to move forward with this matter as revocation proceedings did not reach its finality.

12. My directions' herein is that the grant of 27th November, 2002 (*Visram J*) and 12th June, 2007(*Koome J*) be revoked suo motto. In order for this to occur this court orders that all the Petitioners and all those effected by the revocation of this grant be served with form P&A 69.

13. That this matter be mentioned on date convenient to parties to complete the revocation proceedings Suo motto.

14. The costs be in the cause.

DATED this 19th day of May, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

J.K. Rono advocate instructed by M/S J.K. Rono & Co. advocates for the Petitioner –present

J.R. Kimetto Advocate instructed by the firm of M/S Bett & Co. advocates for the Objector – present