



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Succession Cause 160 of 1991

IN THE MATTER OF THE ESTATE OF KISORIO KIBILIACHA (DECEASED)

MARY RONGOEI KOSORIO 1ST APPLICANT

CHEMOSO KISORIO 2ND APPLICANT

VERSUS

JOEL ROTICH RESPONDENT

RULING

Before me is an application by way of Chamber Summons dated 25th November, 2008 and expressed to be brought under Rule 49 and 73 Probate and Administration Rules for Orders that this Honourable Court be pleased to authorize the Deputy Registrar to execute all such forms and documents as required in order to facilitate the registration of the property of the deceased in the names of the Administrators to the estate and further in order to facilitate the distribution of the said estate on behalf of the Respondent. The Applicants also seek costs of the application.

The application is based on the grounds that the Respondent who is one of Administrators has adamantly refused to execute the necessary documents required to facilitate the registration of the deceased property in the name of the Administrators; that the actions of the Respondent have made it impossible to distribute the estate of the deceased despite the Grant having been confirmed on 26th September, 2002; that the Applicants herein as a consequence been unable to effect registration for their land parcels in their name and that in addition to his refusal to execute the said forms and other documents the Respondent has also resorted to restraining the Applicants from accessing and making use of the said land.

The application is also supported by an affidavit sworn by the Applicants. The facts which gave rise to this litigations briefly may be stated. The deceased Kisorio Kibiliacha died on 28th August, 1991. He was survived by the following dependants:-

1. Mary Rongoei Kisorio
2. Joel Rotich
3. Chemoso Kisorio

4. Jane Jepkosgei

The Respondent applied for Letters of Administration.

The shares to the estate were identified and the mode of distribution was as follows:-

Mary Rongoei Kisorio - 2 acres

Joel Rotich - 10 acres

Chemoso Kisorio - 2 acres

Jane Jepkosgei - 10 acres

The Grant was confirmed accordingly. The respondent was served but did not appear to defend the application. Mr. Birech Learned Counsel appearing for the Applicants submitted that the Grant having been confirmed and the Respondent having been sufficiently catered for he has no reason why he is delaying the execution process.

Having considered the application in light of the affidavit evidence on record and submissions by Counsel for the Applicants I am satisfied that the distribution of the deceased's estate was fair and the Respondent has no good reason why he should restrain the Applicants from accessing and making use of their portions of land.

Accordingly, I allow the application in terms of prayer 1 and 2 of the Chamber Summons dated 25th November, 2008.

DATED AT ELDORET THIS 13TH DAY OF JULY, 2009.

J. L. A. OSIEMO

JUDGE

In the presence of:-