



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT KERICHO**

**Succession Cause 35 of 2003**

**IN THE MATTER OF THE ESTATE OF THE LATE**

**KIPRUTO ARAP SANG .....DECEASED**

**AND**

**JOSHUA KIPNGENO SANG ..... .. 1<sup>ST</sup> PETITIONER/RESPONDENT**

**RECHO CHEMUTAI SANG .....2<sup>ND</sup> PETITIONER/RESPONDENT**

**SOFIA WANGECHI ..... 3<sup>RD</sup> PETITIONER/RESPONDENT**

**AND**

**JOSEPH KIPKEMOI CHEPTIONY .....APPLICANT**

**RULING**

*Application for Revocation of grant dated 8<sup>th</sup> April 2009*

**I. Background**

1. The deceased Kipruto Arap Sang passed away on 30<sup>th</sup> January, 2003 aged 74 years old. The cause of death was cardiopulmonary arrest due to Malaria.

2. He left surviving him three houses. (*The deceased was a polygamist*).

(i) **House No.1**

The widow is deceased. Joshua Kipngeno Rutto the eldest son in that house represented the home disclosing three children.

(ii) **House No.2**

Recho Chemutai Sang the widow to the deceased representing that 2<sup>nd</sup> house having five children.

(iii) **House No.3**

Sofia Wangechi Sang the widow to the deceased representing the third house having three children.

3. All three applied as administrators/administratrix to the estate on 3<sup>rd</sup> April 2003 and disclosed the numerous assets held by the deceased.

4. Temporary letters of grant intestate was issued on 26<sup>th</sup> June, 2003 P&A 41 (*Lesiit J*) Kenya gazette was issued on 7<sup>th</sup> April, 2003 by the then Deputy Registrar.

5. After a period of four years letters of confirmation of grant was issued to the three on 1<sup>st</sup> February, 2007 D. Musinga J. The administratrix had taken the service of J. K. Kirui & Co. Advocates.

6. On 31<sup>st</sup> October 2006. One Joseph Kipkemoi Cheptiony filed for Revocation of grant.

## **II; Revocation of grant application.**

7. This application filed under form P&A 107 & an affidavit form P&A 14 stated that the grant be revoked on grounds that the same was made by a false statement.

8. The respondents administrator on receiving the said application P&A 107, P&A 144 and form P&A 69 asking that they file a replying affidavit. (*The court directions having been taken ex parte to show persons to be served with the application*)

9. The respondent filed a notice of appointment (*P&A 63*) now appointing a new advocate M/S Tengekyon & Koske Co. Advocates.

10. In the affidavit filed by Recho Chemutai Sang she brought it to the court's attention that the applicant had not disclosed how he is related to the deceased or any of the petitioners. She denied that the appellant was a beneficiary to the estate, that the applicant was a survivor with Recho Sang, that the petitioners had concealed from the court material facts and that, it was denied the applicant be included in the estate.

11. On the day called out for hearing on 10<sup>th</sup> November, 2009 of the grant, the applicant nor his advocate attended court.

12. The respondent was heard ex parte and in the absence of the applicant.

## **III. Findings**

13. It is the allegation of making a false statement or failure to disclose a material fact that has to be disclosed to this court in order to seek revocation. The criteria are found in **Section 76** of the **Law of Succession Act. Cap.160** Laws of Kenya none of the items requiring

revocation has been disclosed.

14. The application appears to be that the applicant and not been provided for. In such a case, revocation of grant is not what is filed but an application under **Section 26** of the Law of Succession Act seeking to prove that one is a dependant and had not been provided for. Form P&A 10 should have been filed under a protest before confirmation of grant. As this has now passed the only alternative is to apply for revocation of grant proceedings or dependency proceedings.
15. I would dismiss this application for revocation of grant with costs to the respondents as having no merits.

**Dated this 23<sup>rd</sup> day of November 2009 at Kericho.**

**M. A. ANG'AWA**

**JUDGE**

**Advocates**

J. K. Koskey Advocate instructed by M/S Tengekyon & Koske Co. Advocates for the Petitioners  
N/A for M/S G. M. Maengwe & Co. Advocates for the applicants.