



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Succession Cause 244 of 1992

IN THE MATTER OF THE ESTATE OF KIPYEGON CHEPNGENO – DECEASED

RULING

The late **Kipyegon Chepngeno** (*hereinafter referred to as the deceased*) passed away on 6th November 1972 at an advanced age of 90 years. The letters of administration in respect of his estate were issued on 5th October 1994 to **William Kimetetei Chepngeno**. The grant was subsequently confirmed on 19th July 1995 and the only property of the deceased, namely, title No. Baringo/Ravine/169 was vested in the name of William Kimtai Chepyegon, the administrator to hold the whole share.

On 15th February 2001, Kipngeno Kipyegon applied for the revocation of the grant of letters of administration on the grounds that the grant was obtained fraudulently by the making of a false statement and by concealment from the court of material facts essential to the case. Further, it is alleged that the grant was obtained by means of untrue allegation of facts essential in a point of law to justify the grant. Lastly, the grant was issued to the petitioner who has failed to administer the estate diligently according to the law.

These grounds are expounded in greater detail in the supporting affidavit of the applicant who has averred that the petitioner appropriated the deceased's property to himself, at the exclusion of the other beneficiaries. Accordingly the applicant seeks for orders that the grant be revoked and all the consequential orders especially the transfer of the deceased's property which should revert to the name of the deceased for same to be administered according to the law.

This application was duly served upon the respondent who filed a replying affidavit. The petitioner denied that the deceased's property was supposed to be shared out with the respondent. He claimed that the respondents were given other plots which they sold and after selling their plots they settled in the forest and when they were chased away from the forest they sought accommodation at the petitioner's parcel of land. Directions were given that this matter be determined by way of submissions. However, on the day of the hearing, the petitioner or his Advocate did not attend court and the applicant's counsel urged the court to allow the application for revocation of the grant.

I have gone through the records in this matter especially the petition for the letters of administration, the basis upon which the petitioner was granted with the letters of administration. According to form P & A 5 which was filed by the petitioner, the late Kipyegon Chepngeno was survived by the following:

William Kimitei Chepyegon – son

Chemngeno Chepyegon – son

Mrs. Tapuyole Kigen – Daughter (Married)

Mrs. Tamtwol Kibenei – Daughter (Married)

If the above are the beneficiaries of the deceased, then they ought to have renounced their right to apply for the letters of administration and to benefit from their father's estate. They also ought to have given their consent to the petitioner to proceed and apply for the letters of administration and for the grant to be confirmed in his favour.

There is no such consent on record and the grant should not have been confirmed to the petitioner whereby the entire

estate of the deceased vested upon him. For the above reason I am satisfied that the grant was issued and confirmed to the petitioner through concealment from the court of material facts i.e. the deceased was survived by other beneficiaries whose consent was never obtained.

Accordingly I revoke the grant which was confirmed on 19th July 1995. The original copy of the grant should be returned to court for cancellation. The transfer of title No. Baringo/Ravine/164 in the name William Kimetai Chepyegon is similarly cancelled. The title should revert to the name of the deceased Kipyegon Chepngeno.

Pursuant to the inherent powers vested in this court vide Section 47 of the Law of Succession and Rule 73 of the Probate and Administration Rules, and for ends of justice it is hereby ordered that a fresh grant of letters of administration should be issued jointly to **Kipngeno Kipyegon**, the applicant and William **Kimetai Kipyegon** who shall jointly administer the deceased's estate according to the law. This being a family matter, each party shall bear their own costs of this litigation. It is so ordered.

Ruling read and signed on 24th day of January 2008

M. KOOME

JUDGE

24/1/2008

Before Koome - Judge

Mwiti - court clerk

N/A by applicant

Court: This ruling was scheduled for delivery today. It is therefore signed and the Deputy Registrar to notify the parties of its delivery.

M. KOOME

JUDGE