

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

SUCCESSION CAUSE 475 OF 1998

IN THE MATTER OF THE ESTATE OF KIPSANG KANDIE (DECEASED)

MARY KIMOI SANG.....PETITIONER

VERSUS

CHARLES K. KANDIE.....RESPONDENT

RULING

MARY KIMOI SANG, the Petitioner, is the widow of Kipsang Kandie (the deceased). After being issued with the letters of administration in this cause on the 2nd October 2000, she got the deceased's piece of land situate in Ravine and known as **Title No. Baringo/Ravine/102** transferred to her name. On learning of that her brother-in-law Charles Kandie applied on 8th October 2004 under Rule 44(1) of the Probate and Administration Rules for the revocation of that grant on the ground that the deceased owned that piece of land jointly with him. That application was ondismissed for want of prosecution. Instead of applying to reinstate it his advocate made a fresh application which I struck out on 17th July 2008 for being *res judicata*. He has now come back under **Rule 73** of the **Matrimonial Causes Rules** and the inherent jurisdiction of this court and sought to reinstate the application dated 8th October 2004.

Mr. Kipkenei for the Respondent sees this application as harassment of the Petitioner. He urged me to dismiss it and allow the Petitioner to enjoy her late husband's property peacefully.

I have considered matter. The applicant is the Respondent's brother-in-law. For them to have lasting peace it is my view that the dispute between them should be resolved on merit and finally decided. In the circumstances I allow this application and order the applicant to fix the application for hearing within 45 days. The parties being relatives I order that each bears its own costs.

DATED and delivered at Nakuru this 6th day of November, 2008.

D. K. MARAGA

JUDGE.