IN THE MATTER OF THE ESTATE OF MARTIN TUWEI – DECEASED

R U L I N G

TABORUSEI CHESANG KETER a widow of the late **MARITIM TUWEI** on 24th April,1998 filed this cause in respect of his estate. She was granted Letter of Administration on 19th January,1999. She is the respondent in current application.

After the grant **BENJAMIN KARONEI** , the applicant herein, and **MARY CHESANG** filed an application seeking the revocation of the grant issued. Their main grounds were that the Benjamin was a son of the deceased for a third house and Mary Chesang was a widow of the deceased. The petitioner had not disclosed this in her petition. the application was heard and eventually the grant was revoked. The court found that the applicant was a son of the deceased and therefore entitled to inherit. the court did not proceed to distribute the Estate or state the next step after the nullification. the applicant therefore filed this application under S.66 Law of succession Act and Rules 26,27,49 and 73 of Probate and Administration Rules seeking that he and the respondent Taborusei Chesang Keter be granted Letters Administration jointly and that after grant they be at liberty to apply either jointly or severally for confirmation and distribution.

It was deponed in the supporting affidavit and also submitted by counsel for the applicant that the court found that he is a son of the deceased and entitled to benefit from the Estate Deceased had left land parcel No. Uasin Gishu/Tapsagoi Settlement Scheme/170 measuring 36.40 acres. It had been subdivided into four portions and transferred to other sons of the deceased. The court declared the subdivision and subsequent transfers null and void and ordered they be cancelled and the land to revert to the Estate of the deceased pending issuing of grant and eventual distribution. Since then no grant have been issued or distribution done. He deponed that he is out of the land while the other beneficiaries are on the land.

Application was opposed. There was a replying affidavit by the respondent and submissions by her counsel. She deponed that the applicant never filed a cross-petition and as such she is not a petitioner in this cause. He has not executed the necessary petition, affidavit in support of petition, affidavit of justification and consent to warrant his joinder. He has to comply with the law first before he can be granted letter. No gazettment was ever made after the revocation.

I have carefully considered the application, affidavits and rival submissions. It is not in dispute that the grant which was issued to the respondent was annulled and there is no grant to the Estate existing as of now. The court after revocation of the grant did not go any further as to how a new grant was to be issued. No new petition has been filed either by the applicant or the Respondent for a fresh grant. I believe it is because of that this application was filed. The law is very clear on the steps a party has to take before a grant is issued. A Petitioner must file the petition with the necessary affidavits and consent. Another party can also cross-petition for a grant in a petition already in court. The applicant in this application did not cross petition but only filed an objection which was heard and determined. I think the matter having progressed this far there is no need of any party in this matter to file either a fresh petition or other affidavits to seek for a grant. the petition had already been filled and gazette. True the applicant is not a petitioner or cross-petitioner in the cause but he is already a party in it by virtue of the objections he filed. The court has under S.66 of the Law of Succession Act the discretion at to the person or persons to whom grant may be issued. In exercising that discretion the court has to take into account the best interest of all the beneficiaries. In this matter the court identified the beneficiaries in its judgment over revocation. the respondent is the widow of the deceased and has a first preference for a grant. However the applicant was found to be a son of another house of the deceased. the respondent had petitioned and got a grant but had omitted the applicant. S.66 provides that a grant can be issued to a spouse or spouses with or without association of other beneficiaries. It would therefore be in the best interest of all beneficiaries to have the grant issued to the application and the respondent. There is no need for the court to demand that they start the process all over again filing petitions, affidavits, consents or even rezagetting the cause. the information already on record is clear and from it the court is able to determine who should be issued with the grant of letter of Administration. The contention by the respondent that the

applicant first comply with the law is not tenable in the circumstances.

I therefore allow the first prayer of the application and hereby issue Letters of Administration to the applicant **BENJAMIN KIRWA KARONEI** and the respondent **TABORUSEI CHESANG KETER** jointly.

As to the application for confirmation of the said grant and distribution that should be done after expiry of six months. If there will be any difficulties of the two administrators making a joint application then either party can then make an application to court seeking to be allowed to apply alone.

Costs of the application in the cause.

DATED AND DELIVERED AT ELDORET THIS 30TH DAY OF MAY,2007

KABURU BAUNI

JUDGE

DELIVERED IN THE PRESENCE OF:-