



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Probate & Admin. Cause 273 of 2001

KIPROTICH TOO

SIMEON KIPTARUS BUGEI.....APPLICANTS

HILTON BOEN

-VERSUS-

SALINA JEMELI KIMAIYO:.....RESPONDENT

RULING

On the 17th October, 2005, this court made an order revoking and/or annulling Letters of Administration Intestate to the Estate of Kiptoo Yama made to Salina Jemeli Kimaiyo on 15th February, 2002 and confirmed on 10th July, 2003. In his Ruling Justice Dulu declined to make any orders to cancel any entries and changes which may have been effected on the Registers of 2 parcels of Land belonging to the Estate; name ly, Land parcel No. **SOY/KIPSANGUI BLOCKS 5 (Kipsangui) 175** and **SOY/KIPSANGUI/BLOCK 5(Kipsangui)/156**. The Honourable Judge declined to make the said Orders on the ground that the applicants had not attached any abstract of title to show whether indeed any entries or changes had actually taken place.

As a result of the said ruling, the applicants have now made this application by way of summons under the provisions of section 53 and 66 of the Law of succession and Rule 49 of the Probate and Administration Rules seeking the following orders that:-

(a) A grant of Letters of Administration to the Estate of the late **KIPTOO YAMA** be made to:-

- (1) Kiprotich Too
- (2) Simeon Kiptarus Bugei
- (3) Hilton Boen

(b) All entries and changes effected in the Register on Land parcel No. **SOY/KIPSANGUI BLOCK 5 (KIPSANGUI)/175**, and **SOY/KIPSANGUI BLOCK 5 (KIPSANGUI)/156** and all subsequent entries, effected pursuant to the certificate of confirmation of Grant dated 10th July, 2003 (now revoked/annulled) be cancelled.

(c) Pending the hearing and determination of this application and cause the three houses of the deceased and the beneficiaries be allowed to each cultivate the portions of the Estate that they were cultivating prior to the issuance of the certificate of confirmation of grant dated 10th July,2003.

(d) The grant issued under paragraph (a) above be confirmed within six months.

(e) Costs in the cause.

I have perused the affidavit of service sworn by one Vincent Ogutu on 6th February,2005. I am satisfied that the Respondent was served with the summons herein on 27th January,2006. She has chosen not to appear or file and Replying Affidavit or Grounds of opposition. This is not surprising considering that the respondent never bothered to participate in application for annulment despite being served.

Upon perusal of the certificates of official searches, it is clear and certain that Salina Temeli Kimaiyo procured transfers of the Estate's properties to herself on the basis of the Grant which has now been revoked. These conveyances are the fruits of fraudulent misrepresentations and non-disclosures. As a result of the annulment of the Grant, I do hereby, without any hesitation, order that the said properties be reconveyed and transmitted back to the Estate of **KIPTOO YAMA**, deceased.

Upon consideration of the application, I do hereby grant prayers (a), (b), (c), (d) and (e).

DATED AND DELIVERED AT ELDORET THIS 14TH FEBRUARY,2006

MOHAMMED K. IBRAHIM

JUDGE