



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**P&A NO.64 OF 2018**

**IN THE MATTER OF THE LAW OF SUCCESSION ACT CAP 160 LAWS OF KENYA**

**AND**

**IN THE MATTER OF SOTIK PRINCIPAL MAGISTRATE'S COURT SUCCESSION CAUSE NO.83 OF 2011**

**AND**

**IN THE MATTER OF THE ESTATE OF CHEPNGENO CHUMO *alias* TABUTANY W/O CHUMO (DECEASED)**

**AND**

**IN THE MATTER OF AN APPLICATION BY ELIZABETH CHEPKIRUI NGENO APLICANT/OBJECTOR**

**RUTH CHELANGAT SOI.....1<sup>ST</sup> PETITIONER/RESPONDENT**

**MARY CHELANGAT CHUMO.....2<sup>ND</sup> PETITIONER/RESPONDENT**

**AND**

**ELIZABETH CHEPKIRUI NGENO.....OBJECTOR/APPLICANT**

**RULING**

1. This matter was brought to this court through a Miscellaneous Application and what was filed was a Summons for Revocation or Annulment of Grant dated 12<sup>th</sup> October 2018 in which the applicant/objector is Elizabeth Chepkirui Ngeno. The respondents are listed as the petitioners Ruth Chelangat Soi and Mary Chelangat Chumo. The application was filed by Akinyi & Co. Advocates.

2. The Summons was filed under Rule 63 Probate and Administration Rules, section 47 and 76 (d) of the Law of Succession Act (cap.160) and Rule 44 (1) and (2) of the Probate and Administration Rules and seeks the following orders-

- a) **That, the service of the application be dispensed with in the first instance.**
- b) **That the Certificate of Confirmation of Grant issued herein on 13<sup>th</sup> June 2013 to the petitioners/respondents jointly by the Ag. Principal Magistrate, Sotik Law Courts in Succession Cause No.83 of 2011 be revoked and or annulled.**
- c) **That the objector's name herein be included in form P&A 5 accompanying the petition and the objector/applicant be enjoined as a co-petitioner alongside the other two petitioners.**
- d) **That after revoking or annulling the confirmed grant, a corresponding order be made directing the District Land Registrar, Kericho to annul or revoke the four title deeds namely:**
  - i. **LR. NO.KERICHO/LITEIN/1815**
  - ii. **LR. NO.KERICHO/LITEIN/1816**

iii. LR.NO.KERICHO/LITEIN/1817

iv. LR. NO.KERICHO/LITEIN/1818 and reinstate the four parcels back to the original parcel LR.NO.KERICHO/LITEIN/263 in the name of the deceased.

e) Any necessary directions be made in the interest of justice and fairness.

3. The application has grounds on the face of the Summons, that the Grant of Letters of Administration was defective and obtained fraudulently and that the objector/applicant who was one of three (3) daughters of the deceased was completely left out.

4. The Summon was supported by the affidavit of the objector/applicant sworn on 12<sup>th</sup> October 2018 attaching a copy of the Certificate of Confirmed Grant of Letters of Administration in Sotik Principal Magistrate's Succession Cause No.83 of 2011, a chief's letter dated 07/06/2018, another chief's letter dated 22/04/2018, a search certificate on the proprietorship of the said land, and a court order in Kericho Environment and Land Court Case No.13 of 2018 dated 3<sup>rd</sup> July 2018 in which the objector/applicant herein was the defendant in which she was ordered to be evicted from LR No.Kericho/Litein/1816.

5. The objector/applicant also filed a further affidavit she swore on 6<sup>th</sup> February 2019 denying the contents of the replying affidavit, filed in response to the application, and emphasizing that she was not aware of the succession proceedings.

6. The Summons was opposed through a replying affidavit sworn by Mary Chelangat Chumo one of the petitioners/respondents on 27<sup>th</sup> December 2018 in which it was deponed that the deceased Chepngeno Chumo *alias* Tabutany w/o Chumo married the deponent and the 1<sup>st</sup> petitioner Ruth Chelangat Soi in a woman to woman marriage and sired three daughters-Anna Sang (deceased), Alice Chelangat Koskei (deceased) and Elizabeth Chepkirui Ngeno (the objector/applicant).

7. That the objector/applicant had refused to be apportioned land from the estate, and that in January 2009 at a family meeting, it was resolved how the estate of the deceased would be distributed and that the objector/applicant refused to be given any share of the estate in the subject land Kericho/Litein/263 and said that she was contented with her matrimonial land measuring approximately ten (10) acres, which informed the distribution of the land in Sotik Principal Magistrate Succession Cause No.83 of 2011.

8. The replying affidavit annexed a copy of the Certificate of Confirmed Grant, a copy of the Grant of representation and copy of a chief's letter dated 26<sup>th</sup> February 2013.

9. Though parties' counsel agreed to proceed by way of filing written submissions, I have not seen the written submissions filed by the objector/applicant. Instead, there were filed submissions of Willy Kipkirui Rono used in Kericho ELC Case No.64 of 2018 (OS). The petitioners filed written submissions through counsel Tengekyon & Koske advocates on 8<sup>th</sup> May 2019.

10. Ms Chepkirui holding brief for Ms Akinyi for the objector/applicant and Mr. Koskei for the petitioners, asked the court to give its ruling.

11. I have considered the application, documents filed and submissions filed. Under section 76 of the Law of Succession Act (cap.160) a Grant of Letters of Administration whether or not confirmed may be revoked or annulled. The section provides as follows-

*"76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-*

*(a) that the proceedings to obtain the grant were defective in substance;*

*(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;*

*(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;*

*(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-*

*(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or*

*(ii) to proceed diligently with the administration of the estate; or*

*(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or*

*(e) that the grant has become useless and inoperative through subsequent circumstances.*

12. This application for revocation or annulment of grant will not succeed. The first reason is that the section of the law above which was relied upon by the objector/applicant, does not state that only the High Court can revoke or annul a grant of letters of administration. In my view, the succession matter herein, having been filed and determined in the Principal Magistrate's Court at Sotik No.83 of 2011, the application for revocation or annulment of the Grant should have been filed in that court and in the same relevant file, not in the High Court through a Miscellaneous Application. The objector/applicant cannot come to the High court with a separate Miscellaneous file to revoke or annul a Grant issued in another court, and in another cause. Though section 47 of the Law of Succession Act confers on the High Court powers to entertain any application or determine any dispute under the Act, it does not in my view, confer on this court powers to open separate files and deal with matters that are before or have been determined by other courts. That would amount to misuse of judicial power, and an abuse of court process.

13. The second reason why this application cannot succeed is that it is clear to me that a determination and enforceable order has already been made in Kericho Environment and Land Case No.64 of 2018 (OS) on the subject parcel of land and orders therein granted for eviction of the objector/applicant. That court order has not been appealed against nor varied. This court cannot be used to change what has been determined in another court of equal status. It will again be an abuse of the process of the court, if this court attempts to do so. The objector/applicant is better advised to follow or pursue matters in the relevant causes, and not open other parallel files on matters that have been determined by other courts.

14. I thus find no merits in the application for revocation or annulment of grant. The same is hereby dismissed.

15. This being a family matter, I order that parties bear their respective costs of the proceedings herein.

Dated at Kericho this 15<sup>th</sup> day of July 2019.

**George Dulu**

**JUDGE**