

REPUBLIC OF KENYA

IN THE HIGH COURT

AT KERICHO

SUCCESSION CAUSE NO.105 OF 1998

IN THE MATTER OF THE ESTATE OF THE LATE KIPNGENY

BOIWO Alias KIPNGENY A. BOIWO (DECEASED)

MOSES KIBET CHERIRO.....PETITIONER/RESPONDENT

VERSUS

ELIZABETH JEROTICH KIPKETER.....OBJECTOR/APPLICANT

RULING

1. Before me is a Summons for revocation of grant dated 3rd June 2019 brought by Elizabeth Jerotich Kipketer as objector/applicant through counsel M/s Koech Chepkurui & Associates.
2. The Summons, brought under certificate of urgency seeks the following orders –
 - a) (Spent).
 - b) Pending the hearing and determination of these revocation proceedings this honourable court be pleased to issue a prohibitory order restricting any dealings in land parcel KERICHO/KAPSUSER/1701
 - c) The certificate of grant of letters administration made to MOSES CHERIRO on 14th June 1999 be revoked.
3. The application has ground on the face of the summons that the grant was obtained fraudulently by making of a false statement or concealment of material fact; that the petitioner knowingly misled the court that he was the dependant entitled to apply for letters of administration which fact he knew was untrue; that the petitioner misled the court by false information by not identifying the rightful heirs and dependants of the deceased; and that the petitioner disinherited the objectors.
4. The summons was filed with a supporting affidavit sworn by the applicant on 3rd June 2019 in which the applicant listed Tamiro Boiwo (deceased widow), Kipketer Arap Langat (deceased son), Elizabeth Jerotich Kipketer the applicant (daughter in law); Robert Terer Langat (grandson); Julius Kipkosgei Terer (grandson); Benedictor Cheronon Lagant (grand daughter); Haron Kipngetch Terer (grandson); Sharon Chebet (grand daughter); Mercy Chelangat (grand daughter); Gladys Chepkirui (grand daughter); and Judy Chepkemoi (grand daughter); as dependants of the deceased when he died in 1974. The affidavit annexed a copy of a death certificate of the deceased issued on 30th August 2018, a chief's letter dated 27/8/2018, and a search certificate on the subject land above of 13th August 2018, as well as a death certificate of the same deceased person issued earlier on 17th September 1998.
5. Having perused the application (summons) herein and documents filed, and without determining the merits of the application, in my view, the High Court has no jurisdiction to entertain the application. This is because the succession cause under consideration is Kericho Principal Magistrates Succession Cause No. 105 of 1998, and the certificate of confirmation of grant in question was actually signed by R. M. Mochache -Resident Magistrate on 14th June 1999.
6. Though under section 76 of the Law of Succession Act (Cap 160), the court has powers to consider and determine an application for revocations or annulment of grant of letters of administration, in my view it is the court in which succession proceedings were filed and determined that has powers to hear and determine such application. This court can only deal with appeals that arise from decisions of the magistrate's court but has no powers to hear and determine applications for revocations and annulment of grant letters of administration therefrom, as those powers can only be exercised by the trial court, which may even hear oral evidence.
7. In the spirit of Article 159 of the Constitution however, I will not dismiss or strike out the application, as it will mean additional costs to the applicant. Instead, I order that the file herein be forwarded to the Chief Magistrate's court at Kericho, for further progress. I will thereafter fix a mention date before the Chief Magistrate's court at Kericho.

Dated and delivered at Kericho this 22nd October 2019.

GEORGE DULU

JUDGE