REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO. 220 OF 2005

IN THE MATTER OF THE ESTATE OF THE LATE KIPKOSKEI ARAP MARITIM (DECEASED)

AND

ESTHER CHEPKORIR RUTTO.....PETITIONER

VERSUS

RACHEL CHEPNGETICH KETER.....OBJECTOR

RULING

A grant of letters of administration intestate in respect of the Estate of **Kipkoskei Arap. Maritim**, deceased was made to **Esther Chepkorir Rutto**, hereinafter referred to as the Petitioner/Respondent on 28th September 2000 and confirmed on 19th September 2001. **Rachael Chepngetich Keter**, hereinafter referred to as the Objector/Applicant took out the summons for revocation or annulment of grant dated 14th March 2005 in which she sought for the grant to be revoked on the following grounds:

a. **The grant was obtained fraudulently by the making of a false statement and by concealment from the court material evidence.**

b. **The grant was obtained by means of untrue allegation of fact essential allegation was made inadvertently.**

c. **The proceedings to obtain grant of letters of administration were defective in substance.**

d. **The succession cause ought to have been filed in Kerich and not Nakuru.**

The summons was served upon the Petitioner who in turn appointed the firm of Omwamba Abuki & Co. Advocates to appear for her. Despite having been served with the summons the Petitioner did not respond to the application. Initially directions were given directing the summons to be determined by oral evidence. Those directions were later set aside and substituted with an order directing the summons to be determined by affidavit evidence. A hearing notice was personally effected upon the Petitioner on 6th March 2014, when it became difficult to locate and serve the Petitioner's advocate. Upon perusing the affidavit of service of Paul Kiplimo Kogo, this court was satisfied that the Petitioner was personally served at Chepkutung Village, consequently, the Objector/Applicant was granted leave to proceed *ex-parte*.

I have considered the grounds set out on the face of the summons and the facts deponed in the supporting affidavit of Rachael Chepngetich Keter and sworn on 14th March 2005. The averments made by the

objector remain uncontroverted and I have no reason to disbelieve those dispositions. It is deponed that the late Kipkoskei Maritim did not sire a son hence the Petitioner/Respondent made a false averment when she deponed that she was the deceased's daughter-in- law. It was further argued that the Petitioner was therefore a stranger to the Estate of Kipkoskei Arap Maritim, deceased. The Objector/Applicant also averred that she is a dependant of the deceased hence entitled to succeed the deceased by virtue of the fact that she was married to Masisgut Maritim (now deceased) the deceased's wife according to the Kipsigis Customary Law and rites. The Objector further averred that her marriage with the late Masisgut Maritim was blessed with nine children hence she is a dependant of the deceased hence lawfully entitled to inherit the estate as opposed to the Petitioner who is a total stranger to the estate. There is no dispute that the Petitioner used the confirmed grant to transmit to herself L.R.no.Kericho/Kapsuser/1619. I have examined the affidavit the Petitioner used to obtain the grant. A letter from the Chief Kapsuser location indicated that the Petitioner was married to the deceased's wife because the deceased's wife had no son.

However, the affidavit the Petitioner swore indicates that she is a daughter-in-law of the deceased. There is no clear evidence as to the Petitioner's woman husband. It would appear from the averments made by the protagomists herein that they both claim to have been married to the deceased's widow. I think those allegations need serious interrogation by way of a trial. The Objector has simply asked for the revocation of the grant. It is admitted by the Objector that the only asset of the Estate is L.R.no. Kericho/Kapsuser/1619. That land has already been transmitted hence succession proceedings were completed. Even if I made an order revoking the grant, nothing will change because there is no prayer for the cancellation of title issued to the Objector. Courts do not issue orders in vain. I clearly indicated at the beginning of this ruling that the Petitioner did not respond to the summons. This court was erroneously prompted to make an order to set aside the order directing the summons to be disposed of by oral evidence. After a careful consideration of the matter, it is now clear in my mind that the dispute cannot be established by affidavit evidence. The question as to whether a woman to woman marriage existed cannot be ascertained by affidavit evidence. My perusal of the summons and the supporting affidavit has raised more questions than answers. It would appear there is need to amend the summons for the court to issue necessary and relevant orders.

In the end, I issue the following orders and directions:

i. **The order setting aside the order of direction that the matter be determined by oral evidence is set aside and the previous direction restored.**

ii. **The summons to be heard afresh and disposed of by oral evidence.**

iii. **The Objector/Applicant may amend the summons as hinded herein above and cause the same to be personally served upon the Petitioner and those persons named in the cause as the Petitioner's children.**

iv. **The matter to be fixed for hearing in court on priority basis.**

Dated, signed and delivered in open court this 14th day of March, 2014.

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J.K.SERGON

JUDGE

In the presence of:

Mr. Mutai for Objector

N/A for Petitioner