REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

SUCCESSION CAUSE NO. 63 OF 2009

IN THE MATTER OF THE ESTATE OF THE LATE KIPSANG ARAP KENER (DECEASED)

RODAH CHEROTICH.....1ST APPLICANT

DAVID KIPNGETICH SANG.....1ST APPLICANT

VERSUS

MARY CHEBII MARISIN.....1ST RESPONDENT

ZAKAYO KIPYEGON SANG.....2ND RESPONDENT

JOHNSTONE KIMUTAI SANG.....3RD RESPONDENT

RULING

Rodah Cherotich and **David Kipngetich Sang**, the 1st and 2nd Applicants herein, took out the Summons for Revocation and or Annulment of Grant dated 15th August 2013, in which he sought for the following orders:

1. **THAT service of this application be dispensed with in the first instance.**

2. **THAT the Grant of Letters of Administration issued to Johnstone Kimutai Sang made on the 18th of October 2010, be revoked and/or anulled.**

3. **THAT the resultant titles KERICHO/KABIANGA/4160,4161,4162,4163 and 4164 original from LR.NO.KERICHO/KABIANGA/58 be restored back for the proper distribution by this Honourable Court.**

4. **THAT pending the hearing and determination of revocation/annulment of grant proceedings the respondent herein either by herself,servants agents children or whoever acting through the respondents be stopped from taking possession of disposing off,leasing,alienating or otherwise intermeddling with KERICHO/KABIANGA/4160, 4161,4162,4163 AND 4164 being the resultant titles from KERICHO/KABIANGA/58 the Estate of Kipsang Arap Kener.**

5. **<u>THAT</u> the Respondents do bear the cost of this application.**

The Summons is supported by the affidavit of the Applicant. When served, **Mary Chebii Marisin**, **Zakayo Kipyegon Sang** and **Johnstone Kimutai Sang**, the 1st, 2nd and 3rd Respondents respectively opposed the Summons by filing the Replying Affidavit of Johnstone Kimutai Sang. When the Summons came up for hearing, this court directed the same to be disposed of by affidavit evidence and by written submissions. At the time of writing this Ruling the Respondents were the only parties who had filed their submissions.

I have considered the grounds stated on the face of the summons and the facts deponed in the rival affidavits. I have further taken into account the written submissions of the Respondents. Prayers 1 and 4 of the summons were given at the ex-parte stage hence leaving prayers 2,3 and 5 to be determined at this stage. The grounds relied upon by the applicants are clearly outlined on the face of the summons. It is the submission of the applicants that the Respondents filed the succession cause without notifying them. The applicants also aver that Mary Chebii Marisin, the 1st Respondent herein is a stranger hence cannot benefit from the estate. The Applicants also accused the Respondents of inter meddling with the deceased's estate by selling part of the land to third parties namely **<u>Joseph Kitur</u>**, **<u>Wesley Rutto</u>** and **<u>Elizabeth Siele-Tuimising</u>**. In their response, the Respondents stated that Mary Chebii Marisin, was not a stranger but one of the widows of the deceased's son, the late Samuel Kipkorir Sang. The Respondents further aver that the Applicants were notified of the filing of this cause but they refused to append their signatures to the consent presented to them. The Respondents further stated that they did not intermeddle with the estate but sold off some of the land after obtaining letters of administration.

It is apparent from the affidavit of Johnstone Kimutai Sang and filed in support of the Petition for letters of administration intestate of the estate Kipsang Arap Kener, deceased that the following were listed as the surviving beneficiaries of the Estate:

1. **Johnstone Kimutai Sang.....Son**
2. **Rhoda Cherotich.....Daughter-in-law**
3. **Mary Chebii Marisin.....Daughter-in-law**
4. **Zakayo Kipyegon Sang.....Son**
5. **David Kipngetich Sang.....Son**

The Respondents further identified the asset of the estate as **L.R.no.Kericho/Kabianga/58** and distributed as follows:

1. **Johnstone Kimutai Sang.....4.1acres**
2. **Zakayo Kipyegon Sang.....4.1acres**
3. **David Kipgetich Sang.....4.1acres**
4. **Rhoda Cherotich.....2.05 acres**
5. **Mary Chebii Marisin.....2.05 acres**

Pursuant to the confirmation of grant the aforesaid parcel of land was subdivided giving rise to the following subdivisions:

1. **Kericho/Kabianga/4160**
2. **Kericho/Kabianga/4161**
3. **Kericho/Kabianga/4162**
4. **Kericho/Kabianga/4163**
5. **Kericho/Kabianga/4164**

The question to be determined is whether the Summons for Revocation and or Annulment of Grant strictly comes within the purview of **Section 76** of the **Law of Succession Act**. The Applicants aver that they were not consulted before the filing of the succession cause. The Respondents stated that they were notified but they declined to sign the necessary conduct forms. The Applicants have not controverted this averment which clearly answered the allegation. I am convinced the Applicants were consulted hence I

find this ground to be without merit. The second ground relied by the Applicant's is that Mary Chebii Marisin is a stranger to the estate. In response, the Respondents aver that she is a widow of the late Samuel Kipkorir Sang hence a co-wife to Rhoda Cherotich. Again, the applicants did not respond to controvert that assertion. For the above reason, I find the second ground to be without merit. The final ground argued is that the Respondents have sold part of the land to third parties thus intermeddling with the Estate. The Respondents admitted doing so after they obtained a grant of letters of administration. The response given was never controverted and I have no reason to doubt its veracity. It was important for the Applicants to enjoin those third parties as Respondents or Interested Parties to the summons because the orders sought would obviously affected their rights which in any case may be protected under **Section 93** of the **Law of Succession Act**. In the end, I find the summons to be without merit. It is dismissed since the disputants are members of the same family, I direct that each party meets his or her own costs.

Dated, signed and delivered in open court this 13th day of June, 2014.

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J.K.SERGON

JUDGE