



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISCELLANEOUS APPEAL NO. 1 OF 2019

(An appeal arising from the ruling of Hon. D. Wangeci SRM dated 13th December, 2018 in Kitale Misc. Appl. No. 3 of 2018)

IN THE MATTER OF THE ESTATE OF THE LATE NGUGI KARANJA - (DECEASED)

GEOFREY NGOTHO NJOROGHE.....APPELLANT

JUDGEMENT

1. The Appellant herein had filed a Citation application at the lower court seeking to compel the beneficiaries of the estate of the late **Ngigi Karanja** to take out the letters of administration in respect to his estate. After satisfying itself that the Respondents had been served and had failed to attend court, the lower court did allow the application which permitted him to take out the letters of administration.
2. The Appellant thereafter filed another application seeking to review the earlier orders so that he could have limited letters of administration instead of applying for the full grant.
3. The court has perused the said proceedings and it notes that there are glaring errors including the heading of this appeal. The said errors however can be cured by the provisions of Article 159 of the Constitution as well as the provisions of rule 73 of the Probate Rules. These provisions grant this court wide power and discretion to ensure that the ends of justice are met.
4. Having stated so it appears that there was a land case No. 28 of 2002 pending at the lower court in which the Appellant was decreed 8 acres out of Parcel No. 84 Cherangany Settlement Scheme. The party on the other side was the deceased herein. That matter was what the appellant wanted activated through the obtaining of Letters of Administration of the estate.
5. Looking at the ruling of the court, there was no reason of reviewing its decision as the law empowered it to do so. Whether to apply for Limited Letters of Administration or the full grant would have brought the deceased beneficiaries to the matter. In any case both would have led to the same results, namely the argument over the Appellant's rights in the land which was or is in the name of the deceased.
6. In the premises and barring in mind that the appellant is acting in person, the court shall overlook the procedural errors which as stated above does not go into the root of the matter and allow the appeal.
7. The Appellant is granted limited grant of letters of administration of the estate of the late **Ngigi Karanja**, limited only to prosecuting his rights in regard to the 8 acres in Land Parcel number 84 Cherangany Settlement Scheme as per the decree dated 21st May, 2003 in case No. Kitale SPMCC 28 of 2002.
8. Costs in the cause.

Dated signed and delivered in open court at Kitale this 7th day of August 2019.

H K CHEMITEI

JUDGE

7/8/19

In the presence of:-

Applicant present

Court Assistant – Kirong

Judgment read in open court.