



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**In The Matter Of The Estate Of Samule Ngari Githinwa Alias Samuel Ngari ( Deceased)**

**SUCCESSION CAUSE NO. 1350 OF 2015**

**Dedan Ndegwa Ngari.....Citator**

**Versus**

**Rawson Ngugi Ngari**

**Peris Wangui Ngari**

**Ernest Gichungi Ndungu**

**Obadiah Munga Ngari**

**Naftaly Nganga Ngari**

**Oliver Ndiho Ngari.....Citees**

**RULING**

1. On the 4<sup>th</sup> of June 2015 Dedan Ndegwa Ngari the Citator filed a Citation against the Citees seek orders to accept or refuse letters of administration of the deceased's estate which by law devolves to and vests in the personal representative of the deceased or to show cause why the same should not be granted to the said Dedan Ndegwa Ngari.

2. On the 7<sup>th</sup> June 2016 Obadiah Mungah filed a Petition by way of Cross application for a grant of Letters of Administration Intestate. He presented the said petition as the son of the deceased and states that the consent of every person having an equal or prior right to a grant of representation has been obtained. That he will faithfully administer according to law all the estate of the deceased in his capacity as the personal representative. In his affidavit in support of his cross petition he avers as follows; that the deceased died on the 27<sup>th</sup> of February 1983 and left behind 7 sons namely; Rawson Ngugi Ngari, Peris Wangui, Ernest Gichungi Ndungu, Obadiah Mungah Ngari, Naftaly Nganga Ngari, Oliver Ndiho Ngari and Dedan Ndegwa Ngari. That Dedan's application is refuted by himself and his siblings. That the applicant made applicants to be the sole administrator and beneficiary of the deceased's estate located in 449 Kiambaa Kihara on the 3<sup>rd</sup> of June 2015 at the Kiambu Registry. That the applicant resides on the premises and has yet to take responsibility for any accruing costs by way of rates owed to the local government. That if the grant of letters of administration is not issued to him in his cross petition the petitioner is likely to dispose of the estate of the deceased without any or due regard to the interest of his family members and that there is a likelihood to suffer loss and damage and their interests are likely to be prejudiced.

3. On the 16<sup>th</sup> of September 2016 Dedan Ndegwa Ngari petitioned for Letters of Administration Intestate. In his affidavit he states the names of his siblings who are beneficiaries and gives a full inventory of all assets and liabilities of the deceased at the time of his death as;

**a. Plot No. Kiambaa/ Kiahara/449-41/2 Acres**

**b. 1/3 Share out of Kiambaa/ Kiahara/T.205-1/4 Acre**

**c. Shop in Plot No. 12- Gachie Market Village**

**d. Shop in Plot No. 13- Gachie Market Village**

**e. Plot 1240 in East Laikipia Farmers Company Limited-31/2 Acres**

Total estimated value give is 5,000,000/-. No liabilities are indicated.

4. On the 27<sup>th</sup> of October 2016 Ngugi Ngari filed an affidavit in support of Obadiah's application. He avers that Dedan is not a cooperative person and has been a trouble shooter to the other siblings and that Dedan has denied him and his other siblings the right to use portions of the land given to them by their father and that Dedan has all along refused to contribute towards the payments of the land rates bills. Adding that if Dedan is given the grant of letters of administration he will use it to terrorise other siblings.

5. Dedan Ndegwa in his affidavit in support as a proposed administrator of the estate of Samuel Ngari avers that; each of the children of the deceased resides in half an acre plot No. Kiambaa/ Kihara/ 449 which is about 4 ½ acres. That the remaining half an acre used to be where their late mother Rachael Njoki Ngari used to live and that his siblings want to sell it together with the other assets. Adding that it is now vacant. That Obadiah his 2<sup>nd</sup> born brother has been in possession of all the title documents of the assets of the deceased. That his siblings Obadiah, Rawson, Peris and Ernest are not married and do not have children adding that Oliver has no family as he separated with his wife 5 years ago. That only Naftaly and him have families. That he has not threatened to kill any one of his brothers as alleged. That his brother Rawson is of unsound mind and used to undergo treatment of the same in a clinic in Lavington and that Naftaly has a violent disposition as he uses drugs Marijuana- bhang. That he will faithfully administer the estate of Samuel Ngari if appointed an administrator.

6. On the 28 of November 2016 Obadiah filed an affidavit in response to Dedan's affidavit. He denies the allegations made by Dedan. Adding that he has a wife and 2 children, Peris has a son, Ernest is a young man who has time to marry and Rawson has a family but they are separated for now. That Rawson is not of unsound mind and that Dedan has denied Rawson the right to use his portion of the land. He reiterates what he deponed in his earlier affidavit. In a further affidavit dated the 24/3/2017 he has attached receipts of payments made to Kiambu County Government for property rates.

7. After trying to mediate between the parties and having not reached an agreement on who should be the administrators this court directed that parties adduce viva voce evidence on the issues raised. Dedan and Obadiah testified. They reiterated what is in their affidavits.

8. Having considered the evidence and what is deponed in the affidavits I am of the view that the deceased's estate needs to be wound up without delay. The parties are siblings. They need to work together for the benefit of the estate. **Section 56 (1) (b) of the Law of Succession Act** provides that upto four persons can be appointed to be administrators of the same property. I therefore appoint the following persons to be administrators, **Dedan Ndegwa Ngari , Obadiah Munga Ngari and Peris Wangui Ngari** to be administrators of the estate of Samuel Ngari Githinwa alias Samuel Ngari. The administrators and the beneficiaries shall have a discussion of what constitutes the estate and file a petition for letters of administration within 30 days from the date of this ruling. Costs shall be in the cause.

Dated, signed and delivered this 23<sup>rd</sup> day of **June 2017**

**R. E. OUGO**

**JUDGE**

Ms. Kenyatta      For the Citator

Citees in Person

Ms Charity      Court clerk