



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSE NO. 681 OF 2002

IN THE MATTER OF THE ESTATE OF KENNETH NGARI JOSIAH (DECEASED)

**JOSIAH KARIUKI NGARI
SHEILA IMELDA KARIMI
MARIAM GACHOKA NJERU.....**

PETITIONERS/RESPONDENTS

VERSUS

**EUSTACE NJERUH NGARI JOSAH
Alias NGARI JOSIAH**

.....RESPONDENT

JUDGEMENT

The Grant of Letters of Administration herein were issued to the 3 petitioners jointly way back in the year 2000. The same were confirmed on 3.12.02 and a certificate of confirmation of grant was issued. The same distributed the estate of the late Kenneth Ngari Josiah. Among the properties which were thus distributed was plot No. 26 Ishiara – ½ a share. The other half belongs to one Eustace Nguru Chigiti and it does not form part of the deceased's Estate.

Six years later the applicant herein filed a summons for revocation of the said grant. The principal grounds for his summons are that firstly, he was not informed when the petition was filed and secondly that plot No26 Ishiara, which he is claiming was co-owned by him, the deceased and one Chigiti. The first ground is definitely baseless. I say so because although in his supporting affidavit the Applicant has described himself as a brother to the deceased, it transpired that he was just a half brother. The deceased was survived by a wife and children who all consented to the issuance of the grant to the petitioners. The Applicant herein was a stranger to that family and the petitioners had no reason to obtain his consent before filing the petition. With ground 1 out of the way, the Court was left with the second ground only- i.e that of the ownership of Plot NO.26 Ishiara market. Was it co-owned by the deceased and the Applicant herein and another?

Viva voce evidence was called by both parties. The witnesses included the deceased's elderly mother who confirmed to the court that the Applicant was not her son. She also stated that the plot in question did not belong to the Applicant and that he had only been allowed to set up a poshomill on the plot. The 1st Petitioner also testified in similar vein. He produced documents to show that the plot was jointly owned

by his late father and one Eustace Chigiti and that the Applicant had no interest whatsoever in the same. He produced before the Court a letter of allotment which though partly illegible does not contain the name of the Applicant on it. He also produced a lease agreement for the said plot between the two co-owners (landlords) and Safaricom Limited (as tenants). Again, the Applicant's name is glaringly missing from that document. The lease was for the use of the said plot by Safaricom to install some structures thereon. The term of the lease was 9 years. The question that crosses ones mind is, if the Applicant was a co-owner, why would he have been left out in such an important transaction?

On his part, the Applicant contended that the Ngari Josiah named in the letter of allotment was himself and not the deceased. He therefore changed the story from saying that he was the 3rd joint owner, to that he was the part owner referred to as Ngari Josiah and not the deceased. Both parties filed brief written submissions at the close of the case. I have considered the same carefully.

As stated earlier on the only question to whether the Applicant herein is indeed the owner of the ½ share Ishiara Plot No. 26. He did not produce a single document in support of his claim for ownership unlike the Petitioner/Respondent. The law stipulates that he who claims must prove the existence of a fact. The Applicant therefore has the onus of proving that it was him and not the deceased who co-owned the plot in question.

My finding is that he has dismally failed to prove this. His assertion was just verbal and unsupported by any documentary evidence. The petitioners admit that the Applicant has put up a posho mill on the premises but they say he did so with the permission of the deceased. This does not however give him any proprietary rights over the said property.

In conclusion therefore, I find and hold that the applicant has failed to establish and prove his claim over the said plot. He has failed to prove any of the grounds he has listed on his summons for revocation. His Application therefore fails. I dismiss the same with costs to the Respondents.

W. KARANJA
JUDGE

**DELIVERED AND DATED AT EMBU THIS 17TH DAY OF MARCH, 2011 BY THE
UNDERSIGNED.**

M. WARSAME
JUDGE