



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Succession Cause 40 of 1994**

**IN THE MATTER OF THE ESTATE OF JOSEPH NG'ANG'A NJOROGE (DECEASED)**

**RULING**

Before me is a Summons dated 18<sup>th</sup> March, 2008 and amended on 22<sup>nd</sup> July, 2008 filed by Ms. Kanyua Mwaniki & Wainaina advocates for the applicant. The applicant is the administrator named as **MONICA WANJIRU NGANGA**. The application was said to be filed under Rule 59(i) of the Law of Succession Rules (**Cap.160**).

**The orders sought are as follows-**

1. THAT *the order of injunction made on 11<sup>th</sup> December, 1995 be discharged.*
2. THAT *plot No. 153 Kariobangi Light Industries be  
  
declared to be part of the estate of the deceased as per the grant issued on 22<sup>nd</sup>  
March, 1994.*
3. THAT *the said grant be confirmed on its entirety  
to include plots No. 153 Kariobangi Light  
Industries.*
4. THAT *the said plot be registered in the name of  
  
the administrators, MONICA WANJIRU NGANGA.*
5. *The costs of the application be in the cause.*

The application was filed with an affidavit sworn by the applicant on

18<sup>th</sup> March, 2008. It was deposed in the said affidavit, inter alia, that the applicant was appointed administrator of the estate of the later **JOSEPH NGANGA NJOROGE** on 22<sup>nd</sup> March, 1994; that on 27<sup>th</sup> January, 1995 an order was issued against one David Mwangi Ngari restraining him from transferring plot No. 153 Kariobangi Light Industries till further orders of the court; that on 11<sup>th</sup> December, 1995 the grant was confirmed excluding plot. No. 153 Kariobangi Light Industries when Mr. David Mwangi Ngari appeared in court and claimed that he had sold the property to the deceased; that the deponent had learnt that the said David Mwangi Ngari died on 16<sup>th</sup> July, 1999 and that in view of his death his claim had abated. There was also a further affidavit sworn on 22<sup>nd</sup> July, 2008 filed, in which it was deposed, inter alia, that David Mwangi Ngari did not file any papers to show that the property belonged to him.

The application was not opposed. I would think it would not be opposed because the said David Ngari Mwangi, I am told, died, and

there is no evidence that his administrators, if any were served.

I will not grant the orders sought in the application. This is a succession matter in which letters of administration were confirmed on 21<sup>st</sup> June, 1996 and amended on 21<sup>st</sup> September, 2004. There appears to have been a dispute on ownership of the said plot No. 153 Light Industries Kariobangi, and on 11<sup>th</sup> December, 1995, the court ruled that the subject property be excluded from the assets of the estate herein.

The documents filed do not show in no uncertain terms that the plot belongs to the herein. This court is not well placed in this succession cause to determine ownership of property. If there is a dispute, as there appears to be the case here on who owns the property, the proper forum is the civil court. This is so especially because that dispute was not sorted out before confirmation of grant.

Consequently, I dismiss the application. The applicant is better advised to proceed in the civil court, even if it is in a declaratory suit to determine the matter before seeking to amend the grant of letters of administration, and registering the plot in her name. This court cannot and is ill equipped to grant the declaration of ownership sought.

The application is therefore dismissed.

Dated at Nairobi this 24<sup>th</sup> day of March, 2010.

**GEORGE DULU**

**JUDGE**