



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Misc. Civ. Appli. 259 of 2008**

**MICHAEL THUO NG'ANG'A .....1<sup>ST</sup> APPLICANT**

**NICHOLAS KAROKI NG'ANG'A**

**alias NICHOLAS KARIUKI NG'ANG'A.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**JOSEPH KAMAU NG'ANG'A.....RESPONDENT**

**R U L I N G**

1. The two applicants herein are the Administrators of the estate of Ng'ang'a Thangwa alias S. Nganga Thangwa late of Kiambu District who died on the 4/05/1997. The two applicants, who are also brothers of Joseph Kamau Ng'ang'a were issued with the Grant of Letters of Administration on the 24/10/2005 upon expiry of the 30 day notice period as per Kenya Gazette Notice No.2178 dated 16/09/2005. The Certificate of Death of Ng'ang'a Thangwa, the Gazette Notice No.2178 of 16/09/2005 and the Grant of Letters of Administration Intestate are all annexed to the applicants supporting affidavit dated 17/04/2008 and marked "MTN1" – "MTN3".

2. By this application dated 17/04/2008, the applicants pray for orders

- (i) *THAT the District Land Registrar Kiambu be ordered to remove the cautions lodged by Joseph Kamau Ng'ang'a on titles No. Kiambu Municipality Blocks 5/545 and 5/1100 on 4<sup>th</sup> April 2005 forthwith.*
- (ii) *THAT the Respondent be condemned to pay the Applicants the costs of this application.*

3. The application is premised on four grounds found on the face thereof:-

- (a) *THAT the Applicants are lawful sons of Ng'ang'a Thang'wa, the registered proprietor of title deed Numbers Kiambu Municipality block 5/545 and Kiambu Municipality Blocks 5/1100 who is deceased.*
- (b) *THAT the Applicants are the appointed Administrators and/or legal representatives of the deceased's estate by virtue of letters of Administration granted to them in Nairobi High Court Succession Cause No.926 of 2005.*
- (c) *THAT the Respondent did not contest or file any objection in the said Succession Cause*

*prompting the court to issue the Applicants with a grant of Letters of Administration of the deceased estate.*

*(d) THAT the cautions which were lodged by the Respondent on the 4<sup>th</sup> April 2005 have no basis and without any justifiable cause and the same are hindering the free administration of the deceased's estate.*

4. The application is also supported by the sworn affidavit of Michael Thuo Ng'ang'a, the 1<sup>st</sup> applicant herein who says that he has been duly authorized by his co-applicant to swear the affidavit on his behalf. Though he does not mention the provision of the law under which he is authorized to swear the affidavit the relevant provision is Order 1 Rule 12 of the Civil Procedure Rules (C.P.R) which says:?

*"12 (1) Where there are more plaintiffs than one, anyone or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and like manner, where there are more defendants than one, anyone or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.*

*(2) The authority shall be in writing signed by the party giving it and shall be filed in the case."*

5. I shall return to these provisions shortly. The application proceeded ex parte after the respondent who was served with the application on the 21/04/2008 failed to turn up in court. Mr. Maina Gachuhi for Gachomo for the applicant urged this court to order the Land Registrar Kiambu to remove the cautions placed on the suit lands by the Respondent for no good reason. Mr. Maina also contended that by retaining the cautions on the registers, other beneficiaries of the deceased's estate are being put to unnecessary hardship.

6. I said earlier that I would return to the provisions of Order 1 Rule 12 of the Civil Procedure Rules and in particular to the affidavit sworn by Michael Thuo Ng'ang'a. The said Mr. Ng'ang'a averred that he had the authority of Nicholas Karoki Ng'ang'a alias Nicholas Kariuki Ng'ang'a to make and swear the affidavit. Rule 12(2) requires that any such authority as is referred to by Mr. Ng'ang'a must be in writing signed by the party giving it and shall be filed in the case. I have perused this entire file but have not been able to see the authority given by the 2<sup>nd</sup> applicant herein in terms of Rule 12(2) of Order 1 of the Civil Procedure Rules. What this then means is that the application is not supported by a valid affidavit as is required by the mandatory provisions of the law.

7. The above being the case, I would strike out both the application and the affidavit. Recognizing the importance of the application before me, I would grant leave to the applicants to file a fresh application supported by valid affidavit(s). The applicants shall file such an application within the next thirty (30) days from the date hereof, failing which the leave hereby granted shall lapse. Costs of this application shall be in the cause.

Dated and delivered at Nairobi this 16<sup>th</sup> day of June 2008.

**R.N. SITATI**

**JUDGE**

Delivered in the presence of:?