



**REPUBLIC OF KENYA**

**IN THE MATTER OF THE ESTATE OF KARIUKI NGUNYI (DECEASED)**

**GLADYS WANDIA NDERITU ..... PETITIONER**

**Versus**

**GERALD MAINA NGUNYI ..... OBJECTOR**

**JUDGMENT**

This succession matter relates to the deceased namely KARIUKI NGUNYI. By a chief's letter filed in this succession cause it is indicated that the deceased passed away in 1954. The petitioner for Letters of Administration in respect of this estate is GLADYS WANDIA NDERITU. She has listed the other surviving heirs to the estate which is in accordance with the names of heirs given in the chief's letter. On filing the petition the petitioner cited all those heirs. There is an affidavit showing service was effected on those heirs. An objection was filed by GERALD MAINA NGUNYI. In raising an objection to that petition the objector stated that the petitioner had no capacity to administer the estate of the deceased. Subsequently the objector filed a petition by way of cross application for grant. In the affidavit in support of that application the objector stated that the petition had failed to obtain his consent before filing the petition. Further the objector deponed that the only property said to belong to this estate mainly KIRIMUKUYU/ KIRIA/764 actually belonged to the objector's deceased brother known as Ferdinand Kariuki S. Ngunyi. That brother was said to have died intestate in Narok on 6<sup>th</sup> February 1993. The objector further stated that the petitioner was a dishonest person and therefore not fit to be appointed as an administrator of the estate. On the court directing that the objection be heard by way of affidavit evidence the objector filed a further affidavit dated 13<sup>th</sup> February 2008. In that affidavit the objector highlighted the anomaly of the date of registration of the suit property according to the green card attached to the petition and the date of the deceased death. According to the green card the name of the deceased was entered in the title on 1st July 1959. The deceased as stated before according the chief's letter died in 1954. The objector commented that the deceased could not have acquired that parcel of land during the time of his death. Further the objector reiterated that that property was rightly owned by his deceased brother. He then gave names of the rightful persons who should inherit that land. In that affidavit the objector described the petitioner as dishonest and fraudulent in that she had procured subdivision of the parcel of land which had resulted into parcel Nos. 1090, 1091 and 1092. The objector in making that allegation did not substantiate it with documentary evidence. He however stated that in support of his allegation about the character of the petitioner that there had been a criminal case at Karatina Senior Resident Magistrate's Court being Criminal Case No. 577 of 1997 which he said showed that subdivision. He attached the proceedings of that criminal case. I confirm that I perused the proceedings and noted that the accused person in that case was a person called Alice Wanjiru Kariuki. It is not apparent what relationship that accused person has with the petitioner. Also having gone through the proceedings, it does not show that the petitioner had effected the subdivision of the parcel of land. The petitioner did swear an affidavit dated 14<sup>th</sup> February 2008. The petitioner drew the court's attention to the citation upon the objector amongst others at the time of filing the petition. She stated that the annexed affidavit of service did clearly show that the objector had been served with the citation. The petitioner also denied that the parcel of land belonging to this estate did belong to objector's deceased brother. She stated that the late Ferdinand Kariuki S. Ngunyi impersonated the deceased in this estate and procured a new title deed over the parcel of land and that impersonation resulted in a criminal charge being preferred against him and which resulted in his conviction on 29<sup>th</sup> December 1989. The petitioner attached copy of the proceedings and indeed it is clear that that conviction was made. The petitioner said that she was an honest person and as an example of that trait she said that she cited all the family members who included the objector. Further she stated that the issue of the distribution of the parcel of land had been the subject of discussion by the clan members who had made a decision on how the distribution was to take place. In considering the issues raised that the petitioner has no capacity to

administer the estate because the property belongs to the objectors late brother, I would respond by saying that the conviction of Ferdinand Kariuki S. Ngunyi was conclusive to the fact that the registration of that title in his name was wrong. There is no evidence that that conviction was subjected to a successful appeal. If indeed it is correct as asserted by the objector that the property belongs to his late brother then one would ask the question why the objector seeks to be appointed an administrator of this estate of Kariuki Ngunyi. The court would respond that the registration of the objector's late brother on 11<sup>th</sup> July 1973 was illegal and a nullity. The extract of the green card shows that the late Ferdinand Kariuki S. Ngunyi represented to the Land Registrar that he had changed his name and in that way a title deed was issued in the name of Ferdinand Kariuki S. Ngunyi. I find that there was no evidence shown that the petitioner had effected subdivision of the parcel of land. Having made that finding I find that the objection dated 10<sup>th</sup> May 2002 is without merit. I therefore do hereby proceed to dismiss that objection with costs to the petitioner. The court does hereby proceed to issue an order that a grant of this estate be issued to GLADYS WANDIA NDERITU forthwith. Further I do hereby bearing the period the matter has taken grant leave to the petitioner to apply for confirmation of that grant immediately notwithstanding that the period of 6 months may not have expired.

DATED AND DELIVERED THIS 12<sup>TH</sup> DAY OF JUNE 2008.

**MARY KASANGO**

**JUDGE**