



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**SUCCESSION CAUSE NO.88 OF 2001**  
**IN THE MATTER OF THE ESTATE OF DOUGLAS SIMON KEBARA**  
**FREDRICK MUGO MUTEGI.....PETITIONER/RESPONDENT**  
**AND**  
**PETER NJUGUNA KEBARA.....OBJECTOR/APPLICANT**  
**R U L I N G**

On 23rd April, 2001 the following orders were recorded:-

- 1. That the objector, Peter Njuguna Kebaara be and is hereby included in the list of the beneficiaries to the estate of the deceased.***
- 2. The objector and the Petitioner to appoint an independent care taker of the suit premises namely Plot number 33 Ole-Rongai Scheme/ 542 and the care takers charges to be paid jointly by both parties.***
- 3. The Petitioner shall be gazetted and the net estate shall be determined before distribution.***

The Objector/Co-Administrator, Peter Njuguna Kebaara has now filed an application dated 9th December, 2001 praying that the consent orders of 13th April, 2001 be reviewed. Even though he quoted the wrong date as was rightly pointed out by Mr. Aminga, Learned Counsel for the Petitioner, I believe that the same was a typographical error and he meant the consent orders of 23rd April, 2001 and I will overlook that error so that I

can deal with the substantive issues in the said application.

The Objector also prayed that the Petitioner, Fredrick Mugo Mutegi do declare the status of **Land Parcel number 96** situated at Murugi Sub-location, Meru District and the **Town plot in Chogoria town**. The Objector further prayed that the Petitioner do declare the income and expenditure account of the two aforesaid properties.

The said application was made on the grounds that the Petitioner had failed to disclose and declare some assets of the estate of Douglas Simon Kebaara and because of that on disclosure the Objector was unable to claim under Section 26 of the Law of Succession Act.

In his Affidavit sworn on 17th October, 2001 the Objector deponed that the Petitioner was collecting rent

from a building comprising of eight shops which was located at Chogoria town and which belonged to his late father. He even stated that the Petitioner was occupying one of the shops running a computer business therein.

The Objector also stated that his late father owned a prime coffee farm known as parcel number 96 situated at Murungi Sub-location, Meru District, measuring 6.57 Acres. The said property is unregistered and so he could not have obtained a certificate of an official search for it, he stated.

The Objector also averred that the Petitioner had demolished his late father's house on plot number 33 Ole-Rongai Scheme – 542 and even taken some of the store blocks.

The Respondent/Administrator stated in his Affidavit sworn on 7th January, 2002 that the deceased did not own any building in Chogoria town and challenged the Applicant to produce evidence in proof thereof. He stated that the shop from which he operated his computer business was **Plot number 529**, at Chogoria owned by one **Mutegi Kanampiu**.

Which regard to plot number 96 referred to them by the Objector, he stated that it used to belong to the deceased in 1979 before he disposed of it to his mother. He stated that there was no other property owned by the estate of the deceased. And regarding the allegation that he demolished the deceased's house, he stated that he demolished an old structure that had started caving in since it had no roof or walls for a long time and all the stone blocks were at the farm.

I have considered all the Affidavits filed by the parties in this matter as well as the submissions made by counsel. It is important that all the assets of a deceased person be identified exhaustively and all of them be administered for the benefit of all the beneficiaries. Equally important, care must be taken by an Administrator to ensure that in applying for Letters of Administration only those items that truly belonged to the deceased are included in the schedule of the deceased's estate.

The Applicant should have provided evidence to prove that plot number 96 aforesaid and the plot in Chogoria belonged to the deceased. The Applicant stated that plot number 96 has no title and so he could not have carried out a search. The Respondent however stated that the deceased disposed of the said parcel of land to his mother in 1979. That statement does not seem to have been challenged by the Applicant. In law, he who alleges must prove and have the burden of proof was upon the Applicant.

I believe there are ways of proving ownership of a property even if it is not registered. One can, for example, obtain a statement from the area Land Adjudication Officer showing who the land owner is. A similar statement can also be obtained from the area sub-chief or chief because ordinarily, land is never sold in secret, just between two people, there is always a witness. And if it be true that the said parcel of land was sold to the deceased's mother in 1979, there must have been relatives who witnessed the transaction.

On the other hand, if the said property was not transferred as alleged, equally relatives of the deceased and the local administrators must also be aware and their evidence would have been of great assistance to the Applicant.

Regarding the Plot in Chogoria town, the Respondent categorically stated that the deceased never owned any plot in the said town and further stated that he was renting a shop on plot number 529 owned by one Mutegi Kanampiu. That statement was not challenged. No evidence was provided by the Applicant to prove that the said plot belonged to the deceased. Whether or not the plot has a title deed, it is easy to verify details of ownership of an urban property for example, from the local authority which collects land rates from the owners of the said properties and which also maintains records of plot allocations.

All in all, in the absence of evidence to prove the contentions of the Applicant, I decline to grant the orders sought and dismiss

with costs the application dated 9th December, 2001.

DATED, SIGNED & DELIVERED at Nakuru this 29th day of November, 2004.

**DANIEL MUSINGA**

**AG. JUDGE**

**29/11/2004**