



IN THE MATTER OF THE ESTATE OF THE LATE DAVID JULIUS NTURIBI M'ITHINJI(DECEASED)

R U L I N G

This is an application dated 24th November, 2011 brought under Section 45 of The Laws of Succession Act, Cap.160 Laws of Kenya by administratrix of the estate of David Julius Kithinji Nturibi, who is one of the beneficiaries of the estate of David Nturibi M'Ithinji.

The application seeks the following orders:-

- 1. THAT this Honourable Court be pleased to commit the respondent to prison for a period not exceeding one year or pay a fine not exceeding Kshs.10,000(Kenya Shillings Ten Thousand only) or both such fine and imprisonment for intermeddling with the property of a deceased person namely David Julius Nturibi M'Ithinji (deceased).***
- 2. THAT this Honourable court be pleased to restrain the respondent from interfering with the quiet occupation by the occupants of the property of the intestate estate of the deceased and allow the administration of the estate to proceed to finality.***
- 3. Costs of this application be borne by the respondent.***

The application is supported by an affidavit of Charity Kamani Nturibi who avers that she is the petitioner and administratrix of the estate of David Julius Nturibi M'Ithinji, deceased. The petitioner/administratrix was issued with grant of representation to the estate of the late David Julius Nturibi M'Ithinji on 18th March, 2009. That certificate of confirmation of a grant was issued to the petitioner/administratrix on 27th November, 2009.

The petitioner/administratrix in her affidavit states that on 20th November, 2011 Paul Kithinji Nturibi, the respondent herein, unlawfully, illegally and with malice gate-crashed into one of the petitioner/administratrix tenant's house and disconnected supply of electricity without her permission and as a result has occasioned serious hardship to the said family. That to date the said family is in darkness and the petitioner/administratrix has deponed that she has information that Paul Kithinji is threatening to forcefully eject the tenant from the house. That the house in question is plot No. Ntima/Igoki/6852 which is part of the estate of the deceased David Julius Nturibi M'Ithinji. That Paul Kithinji Nturibi is said to have taken over the possession of plot No.Gakoromone 4A which plot the applicant avers is entitled to own absolutely. The applicant further state that as per her advocates advice, which she believes to be true, the acts of the said Paul Kithinji Nturibi amount to intermeddling with the property of the deceased. The petitioner has further averred that the acts of Paul Kithinji Nturibi has made it impossible for the petitioner/administratrix to complete the administration of the estate and as such the applicant seeks court's protection against the open hostilities of the said Paul Kithinji Nturibi which hostilities he has extended to the tenants.

The application was served upon Paul Kithinji Nturibi on 7th December, 2011 by Ashford G. Riungu, an Advocate of the High Court of Kenya as per affidavit of service dated 11th January, 2012.

The respondent, Paul Kithinji Nturibi did not file replying affidavit or a statement of grounds of

opposition or a notice of preliminary objection.

When the matter came up for hearing, Mr. Ondari Advocate who was holding brief for Mr. A. G. Riungu advocate reiterated the contents of the petitioner/Administratrix's affidavit and added that the applicant is the only sole administratrix and that the grant of letters of administration issued to the applicant has not been challenged.

That the applicant's affidavit has not been contravened or denied by the respondent by way of filing a replying affidavit or notice of preliminary objection or a statement of grounds of opposition. That the respondent has not taken steps if aggrieved by the grant of letters of administration to the application as provided under The Law of Succession Act. The confirmed grant of 27/11/2009, the counsel submitted has not been challenged. He submitted that the respondent therefore has no capacity to interfere with smooth running of the deceased estate. He further submitted the respondent's acts are acts of someone who is deliberately disobeying court's order. He urged court to allow the application and stamp its authority as the whole family had been troubled by the respondent.

The respondent was not represented by a counsel in the application. He had not filed any Replying affidavit or a Preliminary Objection or a statement of grounds of opposition. The court allowed him to respond notwithstanding that he had not filed any documents to opposing the application as to do substantial justice to all parties. The respondent did not address court on any point of law but only responded by stating that he had not filed a replying affidavit but that on 23rd March, 2011 he had filed an application.

The applicant's counsel in response stated that the respondent has not shown why the orders of the court cannot be enforced and that he was concerned that the respondent was not giving dignity to the court.

This application is brought under Section 45 of The Law of Succession Act. Section 45 of The Law of Succession Act provides:-

“45. (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section shall-

(a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and

(b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

According to Section 45 of The Law of Succession Act, Cap.160 anyone who has no authority under this Act, or by any other written law, or has grant of representation under this Act takes possession or dispose of or otherwise intermeddle with any free property of a deceased person for any purpose is guilty of an offence under the said Section.

In the case of **Gitau and 2 others – Vs – Wandai & 5 others(1989) KLR 23, Tanui J**, as he then was stated as follows:-

“According to Section 45 of The Law of Succession Act, Cap.160 intermeddling with the property of a deceased man consists of taking possession, disposing or otherwise intermeddling with any free property.”

I agree with the finding of the Honourable Judge in the way he defined intermeddling, however I would like to add any act that purports to dispossess or result into wastage of deceased estate or causes loss or damage or makes it impossible for administrator to administer the deceased estate by a person who is not

authorized by The Law of Succession Act or by any written law or by a grant of representation under the said Act is an act of intermeddling with free property of a deceased person.

In the instant case Paul Kithinji Nturibi is said to have illegally and with malice to have gate-crashed into one of the petitioner's/administratrix's tenant's house and disconnected power supply to the house without permission and occasioned hardship to the tenant. That even todate the respondent is purporting and threatening to forcefully eject the tenant. That the respondent has taken over the possession of plot No.Gakoromone 4A to which applicant is entitled. That respondent's acts have made it impossible for applicant to complete the administration of the estate.

The respondent has not controverted any of the acts attributed to him. He has asserted that he has filed an application dated 23rd March, 2011. The application which I have perused, seeks revocation of the grant. The application has not been served upon the applicant to date.

The respondent is not expressly authorized by The Law of Succession Act or by grant of representation under The Law of Succession Act to take possession or dispose of or otherwise intermeddle with the free property of the deceased David Julius Nturibi. He has not referred this court to any other written law authorizing him to intermeddle with the deceased property. The filing of an application for revocation of grant in itself, do not authorize any party, for whatever purpose, to take possession or dispose of or threaten any one in lawful possession with eviction or cause harassment to a party in possession with a view to take possession.

I am satisfied the respondent's acts as analyzed herein above amount to intermeddling with free property of a deceased person. I find the applicant's application to be meritorious.

The upshot of the matter is that I find the respondent Paul Kithinji Nturibi to have contravened Section 45 of The Law of Succession Act and liable to be punished in accordance with Section 45 (2) (a) of the Law of Succession Act..

The respondent Paul Kithinji Nturibi is therefore found guilty of an offence of intermeddling with free property of estate of the late David Julius Nturibi and is accordingly as per provisions of Section 45(2)(a) of The Law of Succession Act fined kshs.7000/- in default of payment to serve three months imprisonment.

DATED AND DELIVERED AT MERU THIS 2ND DAY OF FEBRUARY, 2012.

J. A. MAKAU
JUDGE

DELIVERED INNOPEN COURT IN PRESENCE OF:

- 1.Mr. Riungu for petitioner/applicant
- 2.Mr. Paul Kithinji Nturibi the respondent

J. A. MAKAU
JUDGE