

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCC. CAUSE NO. 95 OF 2007

IN THE MATTER OF THE ESTATE OF THE LATE JULIA M'MUNGANIA (DECEASED)

CHARITY RINYA PETITIONER

VERSUS

GEDION GICHUNGE RESPONDENT

JUDGMNET

The petitioner filed a Summons dated 21st May 2009 which was the subject of this court's ruling on 28th May 2010. By that ruling, the court determined prayers No. 1 and 2 and left prayer number 3 to be determined after the court had received *viva voce* evidence from the respondent Gideon Gichunge. Prayer number 3 sought

“That the honourable court be pleased to order the respondent to account for all the deceased personal and immovable properties sold and/or converted by the respondent for his own use.”

The petitioner deponed in her supporting affidavit that the deceased who was her mother owned several movable and immovable properties. That in her lifetime, the deceased was tilling parcels number *Nkuene/Kathera/1035 and 1036*. That the deceased built a permanent house and a kitchen on those parcels of land. The deceased had three goats and two cows on her death which the respondent took and sold and retained the proceeds. That the respondent also demolished the house and the kitchen and sold the material and retained the proceeds of that sale. That the respondent had taken the deceased person's items which he had failed to account to the petitioner. In his evidence, the respondent stated in response to those allegations that the deceased was a wife to his uncle who had died in the 1950s. That the deceased had a child with his uncle called Joyce Karimi. After the death of her husband, the deceased conceived and gave birth to the petitioner herein. The respondent stated that his father in 1968 requested him and his brother to build a house for the deceased which they did. They built the deceased a house made out of mud thatched with grass. The respondent stated that his father in his lifetime transferred to his name parcel number *Nkuene/Kathera/1035*. It was on that land that the deceased house was situated. He stated that he later built the deceased a semi permanent house and generally took care of her. This was because his two daughters that is the petitioner and Karimi had been married 20 years prior to that period. To keep the deceased occupied, he stated that he gave her a cow which later reproduced. Close to her time of death the deceased had two cows and two goats. The deceased before death indicated that one cow was to go to the respondent whilst the other one was to go to his brother called Stephen. Deceased died on 23rd December 2007. After her death, the respondent stated because of the African Custom, he could not enter the deceased house. He therefore surrendered the keys to the house to the chief to hold whilst awaiting the petitioner to collect the deceased personal property. The keys were handed over to the petitioner and her aunt and they both took away the deceased personal items. He also handed over to the petitioner Kshs. 30,000/= that he had been keeping for the deceased. He gave the goats to some boys to deliver them to the petitioner but the petitioner requested them to return the goats to the respondent. That he and his brother Stephen in keeping with the wishes of the deceased each retained one cow. However, since each of them had their own cows, they sold the cows of the

deceased at Kshs. 16,000/= each. In respect of the house and the kitchen he had built for the deceased, he said that because they were attacked by ants, he demolished them and used some of the material to construct a cow shed whilst others he used as firewood. Some of the wood was so badly infested by ants that he threw it away. He denied that he sold the building material of those houses. When I received the evidence of the respondent, I had the opportunity to observe him. The respondent in my view came across as a very honest and straight forward person who had taken pity of the deceased who had been left behind by her daughters who were married and had moved away from their home. He built the deceased the house where she was living and gave her a cow to keep her busy. The house and the kitchen that he built he demolished because they were infested by ants. The cows were given to him and his brother by the deceased in her lifetime. Having received the evidence of the respondent, I would state that I believed his testimony. There is no evidence before court that the respondent took the deceased personal items. I have seen the minutes of the meeting held on 18th January 2009 in the presence of the chief which minutes noted the deceased personal goods which were handed over to the petitioner. The petitioner signed those minutes to acknowledge that handing over. I therefore find that the respondent need not account for any goods of the deceased. I will repeat what I stated in my ruling dated 28th May 2010 where I observed that the petitioner when she first petitioned for the grant of letters of administration did not list any items of property that belonged to the deceased. She did not even list the cows and the goats. I believe that her summons dated 21st May 2009 was an afterthought. The summons had no basis and is not supported by any evidence before me. I therefore make a finding that Gideon Gichunge Manyara did not take any items or property of the deceased. I order Charity Rinya Kiruki to pay the costs of Gideon Gichunge Manyara in this matter.

Dated, signed and delivered at Meru this 18th day of May 2011.

MARY KASANGO
JUDGE