



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**

**Succession Cause 95 of 2007**

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

**RULING**

The petitioner, Charity Rinya Kiruki, having petitioned for grant of letters of administration of this estate, obtained a grant on 31<sup>st</sup> May 2007. The estate belonged to her deceased mother. When the petitioner petitioned, she did not disclose any property owned or any liability owed by the deceased estate in the P & A5 form. Nevertheless, when she filed for summons for confirmation, she sought and obtained an order for her to inherit wholly parcel number *Nkuene/Kathera/1730*. The grant was confirmed as prayed on 11<sup>th</sup> March 2008. The petitioner now seeks by summons dated 21<sup>st</sup> May 2009 for the following prayers:

1. ***That the Hon. Court be pleased to declare the respondent herein an intermeddler in the estate of Julia M'Mungania, deceased.***
2. ***That the Hon. Court be pleased to order the respondent to rebuild the deceased two houses that were demolished by the respondent.***
3. ***That the Hon. Court be pleased to order the respondent to account for all the deceased's personal and immoveable properties sold and/or converted by the respondent for his own use***

The petitioner's application is based on the grounds that when the deceased died she owned several moveable and immovable properties in her name. In particular, she stated that the deceased used to till  $\frac{3}{4}$  of an acre, L.R. No. *Nkuene/Kathera/1035* and *1036*. She had 3 goats and 2 grade cows, a kitchen and a semi-permanent house. The petitioner deponed that immediately after the burial of the deceased, the respondent sold the animals and kept the proceeds. Thereafter, he demolished the deceased house and kitchen and sold the material and retained the proceeds. He further harvested maize planted by the deceased which he sold and again retained the proceeds. The petitioner stated that the respondent even though he had been asked to account for those sales had failed to do so. The respondent Gedion Gichunge Manyara denied the petitioner's depositions and termed them as falsehoods. He stated that he built the house and kitchen for the deceased on parcel number *Nkuene/Kathera/1035* which is registered in his name. On the demise of the deceased, he demolished the houses he had built which he termed as his right. That on the deceased passing away, the petitioner in the company of the local administration removed the deceased chattels and personal effects. The respondent annexed to his replying affidavit a letter written on his behalf by his advocate dated 26<sup>th</sup> March 2006 which was responding to petitioner's demand for accounting and restoration of the deceased property.

It is pertinent, I believe, to quote part of that letter as follows:-

**“.....our client (the respondent) was unable to take care of the 2 cows which yours (the petitioner) never even claimed. He had no other option but to sell them instead of seeing them starve to death.”**  
He proceeded in that letter to state that since the deceased houses had not been claimed by anyone, there was no need to keep them standing. The petitioner denied in her further affidavit having taken the deceased chattels or personal effects.

The petitioner has moved this court under Section 45 (1) (2) of the Law of Succession Act. That Section is in the following terms:-

**“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; an**

**(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**

As can be seen, Section 45 (2) (a) criminalizes the act of intermeddling. For this court to declare as it is sought by the petitioner that the respondent intermeddled, it would be going beyond the jurisdiction of Civil Law which the Succession Law falls under. The best that this court can do is to recommend the police to carry out investigation and if that investigation proves that an offence was committed by the respondent to proceed to prosecute him. To make the declaration sought by the petitioner that the respondent intermeddled would be to take away the rights of the respondent as embodied in Section 77 (2) (c), (d) and (e) of the Constitution. That section provides:-

**“(2) Every person who is charged with a criminal offence –**

**(a) .....**

**(b) .....**

**(c) Shall be given adequate time and facilities for the preparation of his defence.**

**(d) Shall be permitted to defend himself before the court in person or by legal representative of his choice;**

**(e) Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution.”**

From that quotation, it is clear a person cannot be convicted of a criminal offence unless he is taken through a process of a criminal trial with all its attendant obligations towards the accused. This court, as I have stated before, can only recommend that investigation be carried out on the allegation of intermeddling. I also find that the court cannot order the respondent to rebuild houses allegedly owned by the deceased because that would be an order that the court will find difficult to supervise its implementation. For example, how can the court determine the style of the house and the cost that would be put into such rebuilding? Indeed, that would be very difficult for the court to supervise. The prayer for the respondent to give an account is, in my view, within the power of this court to grant. Section 45 (2) (d) of the Law of Succession Act so provides. The respondent, as it has been noted before, admitted to demolishing the deceased houses. He also admitted to selling at least 2 cows of the deceased. The respondent will, in my view, be ultimately liable to account to the petitioner for the sale of the housing material and those two animals. In my view, the petitioner did not prove on a balance of probability that the deceased owned the items of properties itemized as (a) to (g) in the grounds of the summons under consideration. The court can only require the respondent to account for that which he admitted to selling. The only orders therefore that commend themselves to me in this ruling are as follows:-

**1. I recommend the local O.C.S. of the police station near parcels number Nkuene/Kathera/1035 and 1036 to**

- investigate the possible intermeddling of the deceased property and if evidence is found of such intermeddling to proceed to prosecute Gedion Gichunge Manyara.*
2. *Gedion Gichunge Manyara shall within 14 days hereof file in this court an affidavit disclosing the amount realized on the sale of the deceased two cows and building materials for the deceased kitchen and main house.*
  3. *At the reading of this ruling, a date will be given when the court will consider the said affidavit and when the court will give further orders in respect of the summons under considerations.*
  4. *The costs of the summons dated 21<sup>st</sup> May 2009 are awarded to the petitioner in any event.*

Dated and delivered at Meru this 28<sup>th</sup> day of May 2010.

**MARY KASANGO**  
**JUDGE**