



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MERU

**Succession Cause
223 of 2008**

**JOYCE
MUNYUNGU**
.....
PETITIONER

VERSUS

**JUDY MUKIRI
NTARANGWI**
**1ST INTERESTED
PARTY**
**SARAH NKIROTE
NTARANGWI 2ND
INTERESTED PARTY**

RULING

Joyce Munyungu petitioned for letters of administration in this matter on 28th July 2008. A grant was issued to her on 28th July 2008. This ruling relates to two applications. One is dated 19th November 2009 filed by Joyce. It is brought under Sections 45 and 47 of the Law of Succession Act. It seeks to restrain *Isaac M'Barui, John Kaberia and Kanampiu M'Barui* from interfering, wasting or intermeddling with the deceased land parcel number 9014 within Upper Athiru Gaiti Adjudication Section pending the hearing and the determination of this cause. There is no doubt that this land belonged to the deceased. Joyce is the wife of the deceased. Joyce however states that since the death of her husband, she has undergone untold suffering in the hands of the respondents stated above and her step children. Parcel number 9014 has *miraa* trees. When Joyce refused attempts by her father in law, according to her, to be inherited by Kanampiu M'Barui Joyce deponed that her father in law with the other respondents forcibly begun to harvest the miraa on parcel 9014. Further, that on 3rd November 2009, the respondents and a group of people destroyed her kitchen. That contention is confirmed by the chief of Maua Location by his letter dated 5th November 2009. In that letter, the chief stated as follows:-

“Office of the Chief

P.O. Box 149

MAUA

TO WHOM IT MAY CONCERN

RE: JOYCE MUNYUNGU NTARANGWI

This is to certify that the above named person hails from this Location. She has a lot of problems with her in-laws since the death of her husband last year 2008.

They had a very big shamba of miraa but she cannot get anything from it. The in-laws have already demolished her kitchen and took away iron sheets. The case is at the High Court but they are still threatening her.

Please do assist her.

Moses Kobia

The respondents in their replying affidavit stated that Joyce had made the application to ensure that she keeps the miraa to herself to the exclusion of her step children. Apart from making allegations about Joyce marital relationship with the deceased, the respondents did not specifically deny the allegations made by Joyce. On *prima facie* basis, I believe the deposition of Joyce particularly when one considers that they were corroborated by the chief's letter. The 2nd application under consideration is filed by the step daughters of Joyce namely, **Judy Mukiri Ntarangwi and Sarah Nkirote Ntarangwi**. That application is also brought under Section 45 and 47 of the Law of Succession Act. By that application dated 15th January 2010, the petitioner seeks to restrain Joyce from interfering, harvesting and selling *miraa* from parcel number 9014. The Chief's letter dated 10th April 2008 that was obtained by Joyce when she first filed her petition, stated that both the step daughters who have filed this application are married. In the affidavit in support of the application dated 15th January 2010 the step daughters alleged that Joyce had denied them the right to harvest *miraa*. They stated that the deceased had known the hostility between them and Joyce and in his lifetime had arranged how they were to harvest the *miraa*. That mode of harvesting the *miraa* was however not disclosed. Judy in her affidavit admitted being married but stated that Sarah was not. It however does seem from the evidence before court that the two of them do not reside on parcel number 9014. Without intending to make final determination in this volatile matter, I have considered the provisions of Section 35 (1) (a) and (b) of Cap 160. That Section provides as follows:-

“35. (1) Subject to the provisions of Section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to –

(a) the personal and household effects of the deceased absolutely; and

(b) a life interest in the whole residue of the net intestate estate:

From that section, a surviving spouse is entitled to life interest of the deceased property. That being so, and since it is clear Joyce is in occupation of parcel 9014, I grant the following orders:-

- 1. An order is hereby issued restraining Isaac M'Barui, John Kaberia, Kanampiu M'Barui, Judy Mukiri Ntarangwi and Sarah Nkirote Ntarangwi, their servants, agents or persons acting on their behalf from entering, wasting, intermeddling, plucking miraa upon parcel number 9014 within Upper Athiru Gaiti Adjudication Section until further orders of this court.***
- 2. This order shall be served upon O.C.S. of the Police Station which is near parcel number 9014 Upper Athiru Gaiti***

adjudication for the police to ensure that peace and order is maintained and to ensure the implementation of number 1 above.

3. *The Chamber Summons dated 15th January 2010 is dismissed.*
4. *The costs of the Chamber Summons dated 9th November 2009 and 15th January 2010 shall be in the cause.*

Dated and delivered at Meru this 4th day of June 2010.

MARY KASANGO
JUDGE