



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**Probate & Administration 76 of 2004**

**IN THE MATTER OF THE ESTATE OF MUOKI MUASYA ..... DECEASED**

**RULING**

1. On 21.7.2008, I ordered one Justus Mutie Kioko to give sworn evidence as to whether his claim to title no. Makueni/Unoa/58 is valid and whether therefore he should be a beneficiary in the estate of Muoki Muasya (deceased).
2. In his evidence, Kioko aforesaid stated that he purchased the land sometime in 1984 from one Dennis Muoki and his brother, Muli Muoki both sons of the deceased. He entered into a sale agreement with them on 14.11.1984 and paid Kshs. 3,000/= for the whole parcel of land. Thereafter, he entered and took possession by building a house with the help of the two brothers. On 25.2.2000, one Nzomo Mbutu and Mbwele Muoki staked their claim to the land with Mbwele claiming to be the second wife of the deceased and entitled to the land. The dispute went to the Makueni Land Disputes Tribunal and the Tribunal ordered that a succession cause be filed and the estate lawfully distributed.
3. Kioko admitted that he never bought the land from the deceased and so the matter is simple; section 45 of the Law of Succession Act provides as follows:-  
  
*“(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 purposes, take possession or dispose of, or otherwise intermeddle with, any free property of 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 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.*
4. Since neither Kioko, Dennis Muoki nor Muli Kioko had no lawful interest in the deceased’s estate any attempt at disposing any part of it, two years after his death (he died on 14.10.1982), is unlawful as it amounts to inter-meddling with it.
5. In the event, Justus Mutie Kioko has no lawful interest in this estate and he can pursue a refund of his money from those that illegally received it.
6. Orders accordingly.

Dated and delivered at Machakos this **9<sup>th</sup>** day of **October 2009**.

**Isaac Lenaola**

**Judge**

In the presence of:: Mr.Makau h/b for Mr. Kitonga for Applicant

Mr.Kimuli for Respondent

**Isaac Lenaola**

**Judge**