



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**SUCCESSION CAUSE NO. 137 OF 2004**

**IN THE MATTER OF THE ESTATE OF THE**

**LATE JOSEPH WAMUKOTA WANDAH - (DECEASED)**

**AGGREY SIMIYU WANDA.....1<sup>ST</sup> ADMINISTRATOR**

**RUTH NANYAMA WANDA.....2<sup>ND</sup> ADMINISTRATORS**

**VERSUS**

**MAGADALENE WANDA.....INTERESTED PARTY /APPLICANT**

**RULING**

1. By her application dated **7<sup>th</sup> October 2019**, the Applicant herein who is one of the beneficiaries of the deceased estate prays that the 2<sup>nd</sup> Administrator RUTH NANYAMA WANDAH be evicted from Land Parcel **Number 18/458 situate at Bidii within Kitale Municipality**. She deponed that the said parcel of land was given to their second house as per the judgement of this court dated 30<sup>th</sup> May 2018 and the grant issued on the same day.
2. In her home-grown affidavit in support sworn dated 7<sup>th</sup> November 2019 she premised her application on the above judgement as attached to the application. She says that the respondent should honour the judgement of this court as there was no order stopping its implementation.
3. The Respondent has filed grounds of opposition date **29<sup>th</sup> January 2020** arguing among others that this court does not have jurisdiction to entertain the application except only on distribution. The Respondent has at the same time criticised the procedure adopted by the Applicant in making the application as the same does not comply with the laid down rules as per the provisions of the Succession Act and the rules thereunder.
4. In an emotive submission, Prof. Sifuna, Counsel for the Respondent has stated that the property in which the Respondent lives is her matrimonial home and therefore it would be greatly prejudicial if she is evicted. Whereas, respectfully, that may be so, the decision of this court nevertheless for the reasons therein gave the property to the 2<sup>nd</sup> house and that decision is yet to be challenged.
5. The parties have filed their written submissions which the court has perused extensively. The issue which is of paramount importance is that raised by the Respondent, namely, whether this court is seized of the relevant jurisdiction to issue eviction orders.
6. The court agrees nonetheless with the applicant that its findings in the above judgement clearly gave the 2<sup>nd</sup> house the property and the Respondent who was a second widow of the deceased had her own home. In light of the above therefore, she ought to essentially vacate the property.
7. This court however is not armed with the jurisdiction to issue such eviction orders. That in my view, is the preserve of another court preferably a Land and Environment court. This I believe was for a good measure as there are other intricacies and evidence which may arise in the process. Suffice to state that the province of this court was purely the distribution of the estate to the beneficiaries. This court cannot order an eviction in compliance with the orders of distribution. Eviction orders are drastic and all the parties ordinarily must be fully heard before it can be issued.
8. On this score alone, the application is not merited. The other issues concerning the drafting of the application and its failure to follow the rules is secondary for now and the court sees no need to expend its energy on it.
9. The application is therefore dismissed. Each party shall bear its own costs.

**Dated, Signed and delivered at Kitale this 27<sup>th</sup> day of October 2020.**

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**H. K. CHEMITEI.**

**JUDGE**

**27/10/2020**