



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 519 'A' OF 2000

IN THE MATTER OF THE ESTATE OF REUBEN ALUMBE NASIBI (DECEASED)

BETWEEN

ROSE APWOKA.....1ST APPLICANT/RESPONDENT

BERITA KAKAI..... 2ND APPLICANT/RESPONDENT

VERSUS

JOYCE WANDE.....1ST PROTESTOR/APPLICANT

CELIFER ANAMI.....2ND PROTESTOR/APPLICANT

AND

ROSE ALILI.....1ST INTERESTED PARTY

HELLEN AYOKO BENSON ANGOLO.....2ND INTERESTED PARTY

BOAZ AMASA ALUMBE.....3RD INTERESTED PARTY

OMALILA ALUMBE.....4TH INTERESTED PARTY

RULING

1. The applicants, Joyce Wandu and Celifer Anami, have filed an application dated 3rd May, 2018 seeking for review of this court's judgment dated 28th June, 2017 and the review order of 18th April, 2018 on the grounds that the parcels of land that the court ordered that they be allocated to them in the said judgment and the review order had already been sold by the respondents, Rose Apwoka and Rose Alili. The allegations of sale were denied by the two respondents.

2. The matter came up for directions on 21/9/2020 when Mr. Arwanda holding brief for Mr. Kenei for the applicants sought that the application for review be heard by way of *viva voce* evidence. The advocate for the respondents, Mr. Odeny, on the other hand urged that since this is an application for review of a judgment, it should be heard by way of arguments by the advocates for the parties. The court reserved its ruling to determine the issue.

3. The application for review dated 3rd May, 2018 is supported by affidavits of the applicants. It was opposed by the affidavit of one of the respondents, Rose Apwoka. The issues before the court are clear. One party is alleging that the land allocated to them by the court in the review judgment dated 18th April, 2018 has already been sold by the other party. The other party denies that it has sold the land. Mr. Arwanda did not explain why Mr. Kenei wanted the application to be heard by way of oral evidence. Since there is a judgment in record the application for review of the judgment does not warrant for calling of witnesses. Affidavit evidence is sufficient.

4. In the premises, I decline the application by Mr. Kenei that the application proceeds by way of *viva voce* evidence. I do order for the same to proceed by way of arguments by the advocates for the parties.

Delivered, dated and signed at Kakamega this 22nd day of October, 2020.

J. NYAGA NJAGI

JUDGE

In the presence of:

Mr. Kenei for applicants

Mr. Odego for respondents

Parties: 1st and 2nd Respondents present

Court Assistant - Polycap