



**REPUBLIC OF KENYA.**

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

**CIVIL SUIT NO. 75 OF 2001.**

**BENARD WAFULA MAKOKHA :::::::::::::::::::::::::::::: PLAINTIFF.**

**VERSUS**

**JULIUS KIPKENY KETER :::::::::::::::::::::::::::::: ACCUSED.**

**R U L I N G.**

The applicant has moved the court vide the application dated 19/5/2004. She is seeking orders that she be put in possession of the suit land plot No. 52 Ex-coke- farm LR. 6199.

She is also asking the court to order that the defendant's agents and/or persons claiming under the defendants title be removed and/or evicted from the suit land; and that in the event of resistance by the defendant's agents, the officer in charge of Moi's Bridge police station be commanded to assist in provision of security and enforcement of the orders of the court.

The application is supported by the grounds listed on the face of the application and by her affidavit sworn on 19/5/04.

She is relying on order XXIII R.11 and also on oxx1 Rules 84, 86 and 87 of the CP. Rules.

O XXIII r. 11 enables a J/creditor to execute a decree where a J/Debtor has died without substituting him with his legal representative. Execution proceedings do no abate upon the death of a defendant J/D. nor is it necessary to substitute the J/D with his legal representative.

In this case, the J/D is said to have died after judgment had already been given in favour of the applicant for payment of a liquidated amount of money she had added and purchased the suit plot in a public auction after being given leave to

do so by the court. All that remained was her to be put in possession by the time the defendant died.

Under the provisions of OXXIII r.11, she can be put in possession without going back to court to have the defendant substituted. She avers that the defendant's agents have been or are likely to resist her being put into possession. She is thus asking the court for assistance under OXX1 Rules 84, 86 & 87 CPR.

After considering the said application and the grounds raised, along with the supporting affidavit of the applicant, and the law applicable. I am satisfied that the law is on the applicant's side.

The application before me is merited. The applicant should be put in possession of the suit premises.

I consequently allow the application dated 19/5/2004 and grant the orders as prayed with no order as to costs of this application.

**WANJIRU KARANJA.**

**AG. JUDGE.**

**10/6/2004.**

Dated and delivered today at Kitale in presence of Mr. Kidiavai for applicant and defendant's wife, one Jane Keter.

**WANJIRU KARANJA.**

**AG. JUDGE.**

**10/6/2004.**