



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CIVIL APPEAL NO. E199 OF 2023**  
**(CORAM: CHERERE-J)**  
**CIVIL APPEAL NO. E199 OF 2023**

**IN THE MATTER OF THE ESTATE OF MARY WAITHIRA**  
**ABDURAHMAN alias KHADIJA MATHENGE (DECEASED)**

**BETWEEN**

**FRIDAH NYAWERA.....**  
**....APPELLANT**

**AND**

**ABDIRAHMAN MUWEKA MIUNGE.....**  
**.....RESPONDENT**

**RULING**

**Introduction**

1. By an order dated 25<sup>th</sup> January, 2024, this court issued the following orders;

- 1) Pending the hearing and determination of this appeal, there shall be a stay of judgment dated 26<sup>th</sup> October, 2023 and decree issued in Isiolo Kadhi Succession Cause No. E001 of 2023
- 2) Pending the hearing and the determination of the appeal, rents due from Plot. 7918/147 Isiolo Town shall be deposited into a joint account of both the Appellant and the Respondent

- 3) In the event that the parties fail to open an account in the next 14 days, rents due shall be paid into court
  - 4) Appellant is directed to file and serve the record of appeal in the next 45 days
  - 5) Pursuant to section 65 (1) (c) of the Civil Procedure Act, the Deputy Registrar of this court is directed to liaise with the Chief Kadhi to appoint assessors that will sit with the judge during the hearing of the appeal
  - 6) Costs shall abide the outcome of the appeal
  - 7) Mention on 29<sup>th</sup> April, 2024 to confirm compliance with these orders and for direction as to the disposal of the appeal
2. I have considered the notice of motion dated 21<sup>st</sup> March, 2024 supported by an affidavit sworn by the Applicant on 21<sup>st</sup> March, 2024 in which the Applicant argues that the foregoing orders have not served the interest of justice of the parties.
3. As a result, Applicant seeks that the orders be vacated and be substituted with orders set out on the body of the application.
4. Respondent by her replying affidavit sworn on 16<sup>th</sup> May, 2024 confirms that she has continued to receive the rents and use

them at will in defiance of the orders issued on 25<sup>th</sup> January, 2024.

5. It is to be remembered that the orders issued on 25<sup>th</sup> January, 2024 clearly took away the requirement for tenants to pay any rent directly either to the Applicant or the Respondent. If the Respondent is in breach of those express court orders as she has conceded, the Respondent's remedy lies not in reviewing the orders but in enforcing them as by law required.
6. The prayer that the tenants and occupiers of the suit premises be ordered not to pay any rent to the Respondent is therefore already taken care of by the orders issued on 25<sup>th</sup> January, 2024 and an invitation to reissued them in any other manner whatsoever is declined.
7. The OCS Isiolo is not a party to this suit and any invitation to direct him/her to compile a list of tenants in the suit premises indicating how much rent they pay is a duty outside his/her legal mandate and it is also declined.
8. This court already directed that rents from the disputed property be deposited with the court in the event that the parties do not open a joint account.

9. Distress for rent by Auctioneers is governed by Distress for Rent Act Chapter 293 Laws of Kenya. The prayer for an order that an auctioneer be directed to collect the rents from the suit premises and deposit it with the court without following the procedure laid down under the Distress for Rent Act is correspondingly declined.
10. From the foregoing, I find that the notice of motion dated 21<sup>st</sup> March, 2024 is devoid of merit and it is dismissed.

DATED IN MERU THIS 13<sup>th</sup> DAY OF

June 2024  
WAMAE. T.W. CHERERE  
JUDGE



Appearances

Court Assistants - Kinoti/Munene

For Applicant - Mr. Mwirigi for Mukira Mbaya & Co.

Advocates

For Respondent - Mrs. Kaume for M.G.Kaume & Gichuru Co.

Advocates