



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 100 OF 2002

HENRY NDUMBA

(Suing as the legal representative of the estate of MWIRICHIA M'ANGARE.....PLAINTIFF

VERSUS

M'IBIRI M'BOGORI.....1ST DEFENDANT

JUSTUS MURUGA M'IKIUGU.....2ND DEFENDANT

AND

STANDARD CHARTERED BANK OF KENYA LTD.....INTERESTED PARTY

RULING

1. This ruling is in respect of the application dated 15.5.2020 where the applicant/ 1st defendant is seeking for an order to review, discharge the order of 30.4.2020 disallowing the applicant's prayer for the release of the rent deposited in court in respect of parcel MERU MUNICIPALITY/11/BLOCK/97.

2. The applicant prays that the rent deposited in court vide a court order of 10.11.2004 be released to him and the 2nd defendant. He contends that the earlier prayer made for the money to be released to him was made in good faith because he is the one who had been collecting rent and utilizing the same.

3. The respondent has filed a replying affidavit in opposition to the application. However, he has dwelt on the issue of service and the fact that he has a pending application. I note that he is represented in this matter. The last time the matter was in court when a date for ruling was given was on 1/10/2020 and his advocate undertook to file submissions by the close of business that day. However, I have not seen any such submissions.

4. In paragraph 8 of my ruling of 30.4.2020, I had observed as follows **"In the affidavit of the plaintiff, in support of his application dated 26.10.2004, he had averred that "defendants" were receiving money from the tenants which would imply that 1st defendant is not the only one who was entitled to the rent alone....."**

5. The 1st defendant has now incorporated the 2nd defendant where he request that the monies be released to both of them in equal shares. I find that the application is merited. The same is allowed with no orders as to costs. File closed.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF DECEMBER, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this ruling was given via a notice dated 7.12.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and

published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE