



REPUBLIC OF KENYA



**In re Estate of Mary Nyawira Ndungu (Deceased) (Probate & Administration
455 of 2011) [2024] KEHC 13050 (KLR) (25 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13050 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PROBATE & ADMINISTRATION 455 OF 2011**

MA ODERO, J

OCTOBER 25, 2024

IN THE MATTER OF THE ESTATE OF MARY NYAWIRA NDUNGU (DECEASED)

RULING

1. Before this Court for determination is the Summons dated 28th March 2023 by which the Applicants Julius Warui Ndungu And Patrick Wariahe Ndungu seek the following orders:-
 - “ 1. SPENT
 2. That this Court be pleased to set aside or vary the proceedings on 28/03/2023 to enable the Administrators to file their responses to the Application dated 10th February, 2023.
 3. That the costs of this application be provided for”
2. The Summons which was premised upon Rule 44 and 73 of the Probate and Administration Rules was supported by the Affidavit of even date sworn by Mshila Shuma an Advocate of the High Court of Kenya.
3. The Respondents opposed the application through the Replying Affidavit dated 17th April 2023 sworn by Magdaline Wambui Ndungu who is the 2nd Respondent.
4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 20th August 2024 whilst the Respondents relied upon their written submissions dated 26th June 2024.
5. I have considered the application before this Court. The Applicants are seeking leave to file their response to the Summons dated 10th February 2023.
6. I have carefully perused the file. I note that the Summons dated 10th February 2023 was heard by Hon Lady Justice Florence Muchemi who delivered a judgment in respect of that Summons on 4th May 2023, a copy of which judgment is in the Court file.



7. The Applicants obviously cannot be seeking to respond to an application which has already been heard and determined. The High Court is now ‘functus officio’ in respect of the Summons dated 10th February 2023. The only remedy available to the Applicants is that of appeal.
8. In the premises I find that this present summons has clearly been overtaken by events. As such the same is dismissed in its entirety.
9. Costs will be met by the Applicants.

DATED IN NYERI THIS 25TH DAY OF OCTOBER 2024

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MAUREEN A. ODERO

JUDGE

