



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCC NO. 112 OF 2008**

**IN THE MATTER OF THE ESTATE OF MISHECK M'MBOROKI – DECEASED**

**ROBERT MUTWIRI PAULO.....1<sup>ST</sup> APPLICANT**

**RUTH NKATHA RUKARIA.....2<sup>ND</sup> APPLICANT**

**VS**

**ESTHER KATHAO MBOROKI.....1<sup>ST</sup> RESPONDENT**

**ERAH TIRINDI GATOBU.....2<sup>ND</sup> RESPONDENT**

**SARAH KIENDE MBOROKI.....3<sup>RD</sup> RESPONDENT**

**JACKLINE NTINYARI KARE.....4<sup>TH</sup> RESPONDENT**

**EDWARD MWAKI RIUNGU.....5<sup>TH</sup> RESPONDENT**

**RULING**

I have considered all rival submissions. I agree with Kimaita, M/s Kiome and Wamache that an affidavit where it is required serves an important role in adjudication of cases. It provides the grounds upon which the application is premised; it provides the application the foot on which to stand. The affidavit in succession cause is the evidence of the claimants claim and cannot be wished away or depreciated by article 159 (2) (d) of the Constitution. A wise litigant faced with such dilemma as here would quickly withdraw the offending application and file a proper application so as to save time and expedite determination of his claim. Accordingly, I find the application dated 29/7/2013 to be utterly defective and incompetent. Such application cannot be cured by any amount of subsequent affidavits. I therefore order that the said application as well as all subsequent affidavits to be expunged from record. I however recognize the dictates of justice to hear parties on merit and so order that the applicant shall file and serve proper application that complies with Rule 44 of the P&A Rules in 21 days.

It is so ordered.

Mention on 29/5/2019.

**Dated, signed and delivered this 29<sup>th</sup> day of April 2019.**

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**F. GIKONYO**

**JUDGE**