



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 473 OF 1996**

**IN THE MATTER OF THE ESTATE OF DAVID NYIKURI OLWIKI (DECEASED)**

**RULING**

1. I am called upon to determine an application dated 19<sup>th</sup> July 2019. The same was placed before me under certificate of urgency on 24<sup>th</sup> July 2019. I directed that it be served, for *inter partes* hearing on 25<sup>th</sup> September 2019. It would appear that the application was served, for there is a replying affidavit on record filed herein on 22<sup>nd</sup> August 2019.
2. When the matter came up for hearing, Mr. Mutokaa informed me that he had served and pointed to an affidavit of service on record. He then proceeded to argue the application.
3. In the process of preparing the ruling herein, I have looked at the affidavit of service filed on 25<sup>th</sup> September 2019. It returns copy of the certificate of urgency dated 23<sup>rd</sup> July 2019. There is nothing to indicate that the respondent was made aware that the matter was to come up for *inter partes* hearing on 25<sup>th</sup> September 2019. The respondent was not in court on 25<sup>th</sup> September 2019, and I take the view that he had not been notified of the date.
4. In the circumstances, I take the position that it would be unjust to make a determination of the matter based on proceedings that were conducted in the absence of the respondent who had not been properly served.
5. The matter shall be allocated another date for hearing. The respondent shall be properly served with notice of that hearing date.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF NOVEMBER, 2019**

**W. MUSYOKA**

**JUDGE**