

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 911 OF 2003

IN THE MATTER OF THE ESTATE OF JAMES NZOMO MWEU (DECEASED)

CATHERINE MUTINDA NZOMO APPLICANT

V E R S U S

ROSE MWIKALI NDISYA RESPONDENT

RULING

1. The application I am called upon to determine is dated 5th October 2003.
2. In the course of preparing the ruling thereon, I have established from the written submissions filed on behalf of Rose Mwikali Ndisya that there were affidavits referred to in those submissions as having been allegedly filed in court on behalf of the said party. Those affidavits are not in the record in my possession.
3. The affidavits in issue are:-
 - a. **The affidavit of Lawrence Mbuvi sworn on 22nd May 2009;**
 - b. **The affidavit of Tonny Mutua Mweu sworn on 22nd May, 2009;**
 - c. **The affidavit of Sarah W. Mweu sworn on 22nd May 2009;**
 - d. **The affidavit of Paul Mutisya Kioko sworn on 22nd May 2009; and**
 - e. **The affidavit of Joseph Musyoki Mweu sworn on 13th May 2009.**
4. It would not work justice to the parties herein if I proceed to determine the application dated 5th October 2003 without those said affidavits or at any rate without affording the affected party opportunity to avail the same if indeed the said depositions had been filed and should be forming part of the court record.
5. The matter shall be mentioned on a date to be given at the delivery of the ruling for further directions.

DATED, SIGNED and DELIVERED at NAIROBI this 31ST DAY OF JULY, 2015.

W. MUSYOKA

JUDGE