



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 1374 OF 2012**

**AND**

**IN THE MATTER OF HENRY KAGUTA GATHUA – DECEASED**

**RULING**

1. The application dated 22<sup>nd</sup> June 2012 is for revocation of the grant made in Kiambu Senior Resident Magistrate’s Court **Succession Cause No. 697 of 1995** on 5<sup>th</sup> February 1996 and confirmed on 17<sup>th</sup> May 1996 and for the upholding of Thika Chief Magistrate’s **Court Succession Cause No. 245 of 2009**.
2. There were directions on 22<sup>nd</sup> October 2012 and 7<sup>th</sup> May 2013 that the application be served on the administrator in Kiambu Senior Resident Magistrate’s Court **Succession Cause No. 697 of 1995**, Regina Muthoni Kibocha. The order of 7<sup>th</sup> May 2013 required substituted service via advertisement in the *Daily Nation*.
3. The applicants have filed an affidavit of service sworn on 3<sup>rd</sup> June 2013 by their advocate, Sammy Kariuki Muturi, confirming that an advertisement was placed in the *Daily Nation* of 21<sup>st</sup> May 2013, a copy there of is annexed to the said affidavit and marked as “SKM 1”.
4. The application was not replied to by the respondent. This was not surprising, given that the said respondent was dead as at the time of the publication of the notice on 21<sup>st</sup> May 2013. What is surprising is that the applicants would put up the notice when they knew that she was dead and therefore not in a position to respond. Margaret Muthoni Gathua avers at paragraph 13 of her affidavit sworn 22<sup>nd</sup> June 2012 that she had reliably learnt that the respondent had died. So, if that was the case who did they expect would respond to the application? What was the purpose of the service of 21<sup>st</sup> May 2013?
5. Given the foregoing, it would be imprudent to determine the application dated 22<sup>nd</sup> June 2012 without involving the children of the deceased, that is to say – Alice Wangui Kaguta, Joseph Njenga Kaguta, Esther Waceke Kaguta, Paul Kirimi Kaguta, James Karwera Kaguta and Mary Wanjohi Kaguta.
6. I hereby direct the applicants to the application dated 22<sup>nd</sup> June 2012 to serve the said application on the individuals named in paragraph 5 above. Directions shall be given on the determination of the application after the said persons have been served.

**DATED, SIGNED and DELIVERED at NAIROBI this 25<sup>th</sup> DAY OF April, 2014.**

**W. MUSYOKA**

**JUDGE**

**In the presence of Mr. Odhiambo for Mr. Githuru advocate for the applicants.**