



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO. 306 OF 2001**

**IN THE MATTER OF THE ESTATE OF HARUN GACHIENGO KAMAU (DECEASED)**

**RAHAB WANGARI GACHIENGO.....PETITIONER**

**VERSUS**

**NAOMI WAMBUI GACHIENGO.....OBJECTOR**

**RULING**

This cause relates to the estate of the deceased, Harun Gachiengo Kamau. The petitioner is named as Rahab Wangari Gachiengo while Naomi Wambui Gachiengo is the objector.

On 30/6/2013, Onkoba & Co. Advocates filed a notice of motion dated 30/5/2013 on behalf of the objector. They served the notice of motion on the firm of Nancy Njoroge who was on record for the petitioner. The notice of motion was slated for hearing today, the 25/6/2013. Wachira Mbutia Advocate filed a notice of preliminary objection to the notice of motion on behalf of the petitioner on the grounds that the notice of motion is an abuse of the court process, incompetent and unsustainable for the reason that it is improperly supported by an affidavit purportedly sworn by the petitioner and his client has not given Mr. Onkoba any such instructions to file the application for him.

I have seen the affidavit in support of the application. It is purportedly sworn and signed by the petitioner, Rahab Wangari Gachiengo. The orders sought in the application are directed against the petitioner and therefore it does not make any sense that the petitioner would have sworn an affidavit seeking orders against herself. An affidavit being evidence cannot be amended and must be struck off. I believe that was a mistake made by the counsel, Mr. Onkoba. It is Mr. Onkoba who took the hearing date and was aware of the preliminary objection, but he did not attend court for the hearing of his application or the preliminary objection. The net result is that, I do agree with Mr. Wachira that since the affidavit was not sworn by the petitioner, it is incompetent and must be struck off. Once the affidavit is struck off the Notice of Motion will have no evidence to support it, it is equally incompetent and is hereby struck out. I uphold the preliminary objection and costs will go to the petitioner/respondent.

**DATED and DELIVERED this 27<sup>th</sup> day of June, 2013.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

N/A for the petitioner

Mr. Ombati for the respondent

Kennedy – Court Clerk