



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**Succession Cause 2004 of 1998**

**IN THE MATTER OF THE ESTATE OF STEPHEN OWUOR ADUDA-(DECEASED)**

**RULING**

In the course of writing my ruling pursuant to the exparte proceedings of 24<sup>th</sup> April 2012, it became clear that this summons for revocation dated 5<sup>th</sup> March 2012 ought not to have been heard on that day. The matter had been listed for directions but counsel had served a hearing notice, as is evident from the affidavit of service filed on 20<sup>th</sup> April 2012 which was handed to the court on the morning of 24<sup>th</sup> April 2012.

I choose to believe that learned counsel, Mrs. Njogu acted inadvertence and had no intention to mislead the court to hear the matter when the same was for directions.

Upon perusal of the affidavits filed in support of the summons, I am of the considered view that viva voce evidence is necessary and that Ms. Betty Murungi, Advocate mentioned by both deponents of the supporting affidavits ought to be served with the application in order that she makes the necessary representations as regards the depositions touching on her involvement.

In view of the above the exparte proceedings of 24<sup>th</sup> April 2012 are hereby struck out. Directions are hereby given that the matter proceeds by way of viva voce evidence on a date to be taken at the registry. The respondent and Ms. Betty Murungi to be served with the hearing notice. Ms. Murungi to be served with the application as well.

Orders accordingly.

**DATED, SIGNED and DELIVERED at NAIROBI this 7<sup>th</sup> DAY OF June, 2012.**

**M.G. MUGO**  
**JUDGE**

**In the presence of :**

for the applicant.

for the respondents.