



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT EMBU

Civil Appeal 27 of 2006

CYRUS GAKURU GITARI.....APPELLANT

VERSUS

MAGONDU GAKURU.....RESPONDENT

RULING

I have considered the Chamber Summons dated 31st August 2009 filed by P.N. Mugo and Co. Advocates on behalf of the applicant one Cyrus Gakuru. The same is brought under Order XXIII Rule 2 of the Civil Procedure Rules. It is supported by what is described as a “**Replying Affidavit**”. The same is opposed by Grace Watiri Magondu who the appellant seeks to bring on board as the Respondent. Ms Wambugu for the said Grace Watiri submitted strongly that the said application is incurably defective and it should therefore be dismissed.

I must agree with her and I dismiss the same for the following reasons:-

- 1. Order 23 (XXIII) Rule 2 of the Civil Procedure Rules on which the application is premised is not of the orders adopted or imported by the Law of Succession Act from the Civil Procedure Act and Rules as provided for Rule 63 (1) of the P& A Rules.***
- 2. That even if this court were to assume that the said order applies, the alternative prayer to declare the applicant the sole administrator of his late father’s estate would not be granted under the Civil Procedure Rules. The procedure of appointing administrators of deceased’s estate is clearly provided for under the Law of Succession Act.***
- 3. The Affidavit in support of the application is defective in as far as it is a replying affidavit while it is actually a supporting affidavit.***
- 4. Lastly but most important however is the fact that Grace Watiri who the applicant wants to be substituted is actually not named as a respondent in the application and no orders would therefore issue against her.***

The application is therefore incompetent and the same is hereby dismissed for the above reasons with costs to Grace Watiri Magondu.

**W. KARANJA
JUDGE**

Delivered, signed and dated at Embu this 17th day of Feb 2010

In presence of:- Both parties and Mr. Kariuki for P.N. Mugo for applicant.