



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Appeal 24 of 2008

SICILY MUTHONI GUTU.....1<sup>ST</sup> APPLICANT  
ADELIDE WANJIRA GAKUYA.....2<sup>ND</sup> APPLICANT

VERSUS

WAGUAMA NDIGA.....RESPONDENT

AND

ALIKALANDER WATHUIYA MIANO.....APPLICANT

RULING

This application is brought to court under Order XXII (22) Rule 4, 12 of the Civil Procedure Rules.

It is seeking the substitution of one Waguama Ndiga who is deceased. I find the application incompetent and hopelessly defective for the following reasons:-

1. Order XXII Rule 4 provides as hereunder;

*“ If the garnishee disputes his liability, the court*

*instead of making an order that execution be*

*levied, may order that any issue or question*

*necessary for determining his indebtedness be tried and determined in the manner in which an issue or question in a suit is tried or determined.”*

Clearly, these are not garnishee proceedings.

2. Order XXII of the C.P.A Rules is not one of the orders imported into the Law of Succession Act Vide Rule 63 (1) of the Probate and administration Rules.

The application is therefore dismissed.

W. KARANJA  
JUDGE

Delivered, signed and dated at Embu this 16th day of Feb, 2010

In presence of:- Mr. Kariithi and Mr. Ngigi for the parties,