



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

The application dated 24.2.2010 seeks the following:-

- 1. That the Honourable Court be pleased to substitute the name of the MAGONDU GAKURU with the name of his widow GRACE WATIRI MAGONDU or on the alternative (sic) and without prejudice to the above to declare the applicant herein as the sole Administrator of the Estate of his demised father GAKURU GITHAE.*
- 2. That this Honourable Court be pleased to grant stay of execution of the order/judgment of 30.12.05 (Kerugoya Succession Cause No. 80 of 2004) or any other subsequent orders pending the hearing and determination of the appeal herein.*

The 2nd prayer was the single prayer in the application dated 4th February, 2008 filed by J. Ndana Advocates on behalf of the applicant. The same was heard and the court delivered its ruling on 30.10.08 which ruling expressly dismissed the application on merit. That prayer was therefore Res judicata and it should not have been refiled.

A subsequent application was filed by P.N. Mugo and Company Advocates on 31.8.09 seeking orders of substitution. The same was also heard and dismissed on 17.2.2010. The applicant's counsel subsequently filed the application dated 24.2.2010 seeking the 2 orders that had been previously prayed for through the applications that had been dismissed earlier on. Indeed even in his supporting affidavit, the applicant does not allude to the fact that similar applications had been heard and dismissed by this court. I confirm that the court has heard the applications with similar prayers and dismissed both of them.

The issues were raised in the 2 other applications which were not struck out but dismissed by the court. This application is therefore Res Judicata and I dismiss it with costs to the Respondent.

W. KARANJA
JUDGE

Delivered, dated and signed this 24th of June 2010.

In the presence of:- **(as per coram)**

24/06/2010

Before W. Karanja J.

Mr. Mugo Kariuki for Applicant present

N/A for Respondent

W. KARANJA
JUDGE
Court:

Ruling delivered today in open court in presence of the above.

W. KARANJA
JUDGE

Court:

Mr. Mugo be supplied with copies of the proceedings and Ruling on payment of the requisite court fees.

W. KARANJA
JUDGE
24/06/2010