

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Case 50 of 1972

KINYUA MURI.....PLAINTIFF

VERSUS

ROSE WANGUI NGIGIE..... DEFENDANT

RULING

Kinyua Muri, the Plaintiff herein, took out the motion dated 23rd March 2009 in which he applied for an order to direct the parcel of land known as Githi/Kirerema/998 in the names of Rose Wangui Ngige, the defendant herein, to be sold and the proceeds to be used to satisfy costs awarded. The Applicant applied for the sale to be advertised in the Daily Nation and for the sale to be conducted by M/S Hippo General Merchants. The motion is taken out pursuant to the provisions of **Order XXI rules 59, 60, 61 and 62** of the Civil Procedure Rules. The application is supported by the affidavit of Charles Muchemi Karweru sworn on 30th March 2009. There is evidence that the motion was served but no reply has been filed, consequently the application proceeded for hearing *ex parte* under **Order L rule 16 (3)** of the Civil Procedure Rules.

The record shows that one John Githinji Kiiru, wrote to the Deputy Registrar of this Court on 26th May 2009, in which he informed the Court that the Defendant had died on 3rd December 2008. The letter had nine (9) copies of the death certificate annexed to it. The letter is copied to the firm of Karweru & Co. Advocates. It would appear from the affidavit of service of Samuel Wachira Mbuthia, that service of the motion was effected upon John Githinji on 12th April 2009. That service must have prompted him to write to Court. It is obvious from the affidavit of service of Samuel Mbuthia that the motion was not served upon the Defendant and or her legal representative. Mr. Karweru, learned advocate was not candid to this Court when he stated that there was proper service. On this point alone, I do not think it is wise for me to make any conclusive findings on the motion. I hereby set aside the proceedings taken before me *ex parte*. I direct the motion to be marked as stood over generally. A hearing date to be given by the registry and that the motion be served with a Hearing Notice.

Dated and delivered this 29th day of July 2009.

J. K. SERGON

JUDGE

In open Court in the presence of Mr. Nderi holding brief for Mr. Karweru for Applicant.