

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Succession Cause 290 of 2007

IN THE MATTER OF: THE ESTATE OF NYAMBURA KINYANJUI KINOO
(DECEASED)

RAKEL MURUGA KANGETHE.....APPLICANT

VERSUS

JOHN KIBETI NGUGIRESPONDENT

R U L I N G

I have considered the application and in particular the Preliminary objection raised. The Applicant in her affidavit of 18.08.09 has admitted that she signed the affidavit in Nairobi in the presence of the advocates. This confirms that she did not appear before D.C. Muya Commissioner of Oaths in Mombasa.

I therefore find that the affidavit is incompetent and irregular as it was not sworn as required. The authenticity of the affidavit has also come into question as the affidavit was purportedly signed by a form of signature while the Replying Affidavit sworn before D.G. Muya was thumb printed. While there is no evidence of forgery yet the issue raises some questions.

I do hereby strike out the affidavit purportedly sworn on 18.08.09. As the application dated 18.08.09 is not supported by any affidavit it is also struck out.

The applicant shall pay the costs to the Respondent.

Dated at Mombasa this 21st day of October 2009.

M.K. IBRAHIM

J U D G E