

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO 2616 OF 1981

MARY WANJA NJOROGI

(ADMINISTRATOR OF THE ESTATE OF

FREDRICK NJOROGI THUNI, DECEASED)...PLAINTIFF/DECREE-HOLDER

VERSUS

NDUNGU KIMUCHU (DECEASED)...1ST DEFENDANT/JUDGMENT-DEBTOR

AND

- 1. JACINTA WANGUI NDUNG’U**
- 2. LABAN MUCHIRI NDUNG’U.....RESPONDENTS**

PRELIMINARY RULING

1. The Plaintiff/Decree-Holder herein has sought by **notice of motion dated 29th January 2014** leave of the court to execute the outstanding decretal sum against the Respondents in this application, **Jacinta Wangui Ndung’u** and **Laban Muchiri Ndung’u**, being the legal representatives of the 1st Defendant/Judgment-Debtor, **Ndung’u Kimuchu**, who has since died. The application is made under **section 37 (1) of the Civil Procedure Act, Cap 21**. That provision states –

“Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court which passed it to execute the same against the legal representative of such deceased, or against any person who was intermeddled with the estate of such deceased”.

2. The main point of objection to the application taken by the Respondents in their **replying affidavit sworn by the 1st Respondent and filed in court on 10th April 2014** is that the decree has been fully settled. The Plaintiff has joined issue with the Respondents upon that point by her **supplementary affidavit filed on 28th April 2014**.

3. I will in the circumstances direct that the Deputy Registrar of this court do take accounts for purposes of establishing whether or not the decree has been fully settled, and if not, what is outstanding upon it. For that purpose let the parties appear before the Deputy Registrar on a date to be given at delivery of this preliminary ruling. After the Deputy Registrar has taken accounts, the matter shall be brought back to this court in order to give the final ruling on the notice of motion dated 29th January 2014. Costs shall abide the final ruling. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 1ST DAY OF JULY 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 4TH DAY OF JULY 2014