

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1638 OF 1993

IN THE MATTER OF THE ESTATE OF SIMON NDUNGU KIHONGE (DECEASED)

RULING

1. The application dated 23rd October 2013 is up for determination. It seeks the setting aside of the ruling delivered on 16th May 2013. It is also contended that the beneficiaries had previously reached a compromise on distribution.
2. The applicant states that she was not served with the summons dated 29th October 2012 which was the basis of the ruling delivered on 16th May 2013.
3. There is an affidavit of service sworn on 14th March 2014 showing that the application dated 23rd October 2013 was served on the Kirundi & Company Advocates, Maira & Ndegwa, Advocates and Mwangi & Guandaru Advocates. None of them filed replies to the said application.
4. I have perused the court record. The application dated 29th October 2012 was drawn to be served upon Maira & Ndegwa, Advocates, Kirundi & Company Advocates and Jane Nyambura Ndungu.
5. The affidavit of service on record sworn on 10th January 2013 shows that the application was served on Kirundi & Company, Advocates and Maira & Ndegwa, Advocates. The hearing notice dated 17th December 2012 returned with the affidavit of service of 10th January 2013 reveals that it was for service on Maira & Ndegwa Advocates, Kirundi & Company Advocates and Jane Nyambura Ndungu. There are stamps embossed on the hearing notice showing that the same was served on Maira & Ndegwa Advocates and Kirundi & Company Advocates.
6. There is no evidence that the said application was ever served on Jane Nyambura Ndungu. I am therefore satisfied that the orders made on 16th May 2013 ought to be set aside.
7. I do hereby allow the application dated 23rd October 2013 in terms of prayer 1. I will not allow prayer 2 of the application for a consent order must be recorded with the concurrence of all the parties to the compromise. There shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 3rd DAY OF October 2014.

W. MUSYOKA

JUDGE