



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI**

Succession Cause 3 of 1999

IN THE MATTER OF THE ESTATE OF WAIRA MUHURU.....DECEASED

AND

ALICE WANGARI WAIRIAPETITIONER

VERSUS

FRANCIS MUCHIRI WAIRIA.....OBJECTOR

RULING

The plaintiff herein filed a Chamber Summons dated 16th march 2007 when the same came up for hearing counsel for the respondent opposed it on the basis that the applicant had made a previous application by way of Chamber Summons dated 8th October 2002 and which application prayed for exactly the same orders as the present one. In respect of that application of 8th of October 2002 the same came up for hearing before the Deputy Registrar of this court on 14th March 2007. The Deputy Registrar dismissed that application in view of the absence of the applicant's counsel. I confirm that I have looked at both application and in-deed the prayers are the same. The applicant counsel in response to the respondents counsel stated that the dismissal by the Deputy Registrar was without jurisdiction since he had no jurisdiction to hear the application. I find that in as much as the Deputy Registrar did not have jurisdiction to hear that Chamber Summons dated 8th October 2002, the same was however dismissed. The applicant instead of setting aside that dismissal filed a fresh application seeking the same prayers. That in my view is an abuse of court processes and the court cannot allow such abuse. The applicant should have made an application to set aside the dismissal and to seek reinstatement of the application, instead of filing afresh application. The applicant's argument is rejected and is found to be an abuse of court process. The court has inherent power to stop the abuse of it process. Accordingly the court does hereby strike out the Chamber Summons dated 16th march 2007 with costs to the respondent. Orders accordingly.

Dated and Delivered at Nyeri this 25th Day of May 2007

MARY KASANGO

JUDGE



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