



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**  
**CIVIL CASE NO. 162 OF 2006 FORMERLY 4140 OF 1990**

**HOUSING FINANCE CO. OF KENYA LTD. ::::::::::::::: PLAINTIFF**

**VERSUS**

**GEORGE GIKUBU MBUTHIA ::::::::::::::: DEFENDANT**

**RULING**

1. The application before the court is a Notice of Motion dated and filed in court on 27th November 2014 filed by the Defendant/Respondent seeking to secure an order:-
  - i. ***That the Chief Land Registrar – Central Registry Nairobi be compelled to urgently produce certified Photostat copy of the Register of all entries over LR 36/11/1 (N 48 Folio, 308/5 GLA File No. 15402) Eastleigh Nairobi from entry number 1386 dated April 2006 to date.***
2. The application is premised on the grounds set out therein and is supported by affidavit of the Defendant/Applicant **Mr. George Gikubu Mbuthia** dated and filed in court on **27th November 2014**.
3. The Applicant's case is that he is the owner of this suit property having won HCCC NO. 4140 of 1990 on 16th May 1991 and thereafter the decree issued thereof on 23rd October 1991. The Plaintiffs (HFCK) who unlawfully held the Defendant's title over the suit property even after losing the suit on or about 19th April 20106 handed over the Defendant's original indenture in respect of LR 36/11/1 Eastleigh Nairobi without the Defendant's consent and in fraudulent misrepresentation, to one Mohammed Sheikh Hussein – the Manager/Agent of one Ahmednassir Abdullahi advocate. The Defendant has since 29th October 2014 attempted to obtain a copy of the current search but without success.
4. The Applicant submitted that the owner of LR/37/11/1 Eastleigh Nairobi has been granted a "decree" by this court on 16th May 19001 which decree was erroneously named "Order". See annexure marked '**GGM 1**' Number 4. The Applicant states that the Plaintiff never moved the court to set aside the decree and therefore lacks locus standi to deal with the property. He further states that his Indenture was registered as entry number 5 on 11th August 1983 and still remains in situ. The Applicant submitted that the Plaintiff including its former agents namely:- Ahmednassir Abullahi Advocate-External Legal Adviser, Charles Kamari P/A No. 420461/1, Kenneth Minae Kinyua P/A No. 39967/1, Rose K. Simani – Company Secretary, Joseph Kamau Kanai – Manager - Legal Services were under statutory duty to obey the decree herein-above instead of involving themselves in fraud. See annexure marked bundle '**GGM 1**' Number 1 – 21.
5. The application is opposed by the Plaintiff vide a replying affidavit filed in court on 21st January 2015 deponed to by Martin Machira who describes himself as the Legal Manager – Litigation of the Plaintiff Company. The deponent states that the application before the court is misconceived, vexatious and an abuse of process by the court. The reason why the application is an abuse of

process is because there is an existing suit (being **HCCC No. 1203 of 2006 George Gikubu Mbutia - Vs- Housing Finance Co. of Kenya**) wherein the Defendant has sued the Plaintiff over the possession of LR. No. 36/11/1, the subject matter of this same suit. The Plaintiff submitted that the main prayer in the Defendant's application ought to have been made in HCCC No. 1203 of 2006, since that suit is on a dispute about the possession of LR No. 36/11/1 and the proprietary dealings of the said property. A determination of this application in that suit will go a long way into delivering justice for both parties in that suit. The Defendant has not shown or laid out sufficient grounds to warrant this court to grant the prayers sought in the application. No evidence has been produced to warrant the granting of the prayers sought and no reason has been advanced as to why the orders sought ought to be granted. It was submitted that the Defendant/Applicant herein is acting in bad faith in making an application of this nature in this suit, knowing very well that there is another suit filed by him over the same subject matter and whereby the orders sought herein would have been legally sought. The Plaintiff submitted that this application should be dismissed for lack of merit.

6. I have considered the application. The order sought is directed against the Chief Land Registrar – Central Registry, Nairobi. The said Registrar was at the direction of this court served with the Notice of this application and was at liberty to attend this hearing but she has chosen not to attend. To my knowledge any document in the custody of the Chief Land Registrar is a public document which a member of the public who chooses to do so may inspect at anytime subject to payment of fees. The Applicant herein simply seeks to inspect the said document mentioned in the prayers. What he chooses to do with the information he requires is upto him. It is also clear that he is an interested party, if not the owner as alleged, of that property. This means that he is entitled to inspect view, and demand copies of title or documents related to that title. I have appreciated the Respondent's submissions that the request ought to have been made in suit HCCC NO. 1203 of 2006. However, that does not stop the Applicant asking for the same in this suit if the Applicant believes the information and the documentation is necessary for him to prepare his defence in this matter.
7. In the upshot, I find that the application is merited and i herewith allow the same in the following terms:-
  - i. ***That the Chief Land Registrar – Central Registry Nairobi be and is hereby compelled to produce certified Photostat copy of the Register of all entries over LR 36/11/1 (N 48 Folio, 308/5 GLA File No. 15402) Eastleigh Nairobi from entry number 1386 dated April 2006 to date.***
  - ii. ***Costs shall be in the cause.***

Orders accordingly.

**READ, DELIVERED AND DATED AT NAIROBI THIS 20TH DAY OF FEBRUARY 2015**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

In person - Plaintiff/Applicant

M/s Kageni holding brief for Ayisi for Defendant/Respondent

Teresia – Court Clerk