



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

Civil Suit No. 54 Of 2013

IN THE MATTER OF MORTGAGOR/CHARGOR AND MORTGAGEE/CHARGE

AND

IN THE MATTER OF PROPERTY KNOWN AS L.R. NO. 15153/93, KIAMBU

AND

IN THE MATTER OF DISCHARGE OF CHARGE

BETWEEN

ANTONY THUO KANAI ::: PLAINTIFF

- VERSUS -

CANNON ASSURANCE LIMITED :::DEFENDANT

RULING

1. Before the court is **Originating Summons** dated **13th February 2013** filed under Order 37, Rule 14 of the Civil Procedure Rules, Section 84 (1) (a) (b) of the Land Act, Section 1A, 1B and 3A of the Civil Procedure Act. The application seeks upto 10 orders named therein and is based on the grounds set out therein.
2. The application is opposed vide the Replying Affidavit by **MAINA MUKOMA** dated **22nd February 2013** with annexures.
3. With the leave of the court the parties filed written submissions for the applicaton. The Applicant did that on 6th December 2013 while the Respondent filed theirs on 10th December 2013.
4. I have carefully considered the submissions of the parities. In particular the parties never made any oral submissions on the matter and created the impression that the matter at hand was a simple matter. However, having considered their written submissions, I have found that a lot of relevant information is being provided by way of written submissions while the same ought to have been given by oral evidence. If the parties believe in all that information contained in the submissions, then the parties must also agree that evidence cannot be given through submissions.
5. After very careful consideration of the application and submissions I make the following orders:-
 - a. *I confirm prayer number 2 of the Originating Summons dated 13th February 2013 which this court granted on 26th February 2013.*

- b. *I also allow prayer number 3 of the application and direct the Defendant/Respondent to prepare a correct and detailed statement of the loan account between it and the Applicant. That statement shall be delivered to court within 14 days from the date of this Ruling.*
- c. *I direct that all other outstanding issues, including the discharge of the charge dated 22nd March 2012 shall abide full hearing of the matter through oral evidence of the parties.*
- d. *I direct the parties to file and serve their lists of documents and statements of witnesses in compliance with Order 11 in readiness for trial on a date to be agreed on in court today.*

DATED, READ AND DELIVERED AT NAIROBI THIS 17TH DAY OF MARCH 2014

E. K. O. OGOLA

JUDGE

PRESENT:

Thuo for Plaintiff

M/s Ngonde for Defendant

Teresia – Court Clerk