



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 625 OF 2006

GRACE WANJIKU MBUGUA, PETER CHEGE KIARIE,

FLORENCE WAIRIMU MBUGUA & SYLVIA MURUGI MBUGUA

(Suing as Administrators of the

Estate of JOSEPH KIARIE MBUGUA ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

ISAAC KINYANJUI NJOROGE ::::::::::::::::::::::::::::::::::: DEFENDANT

AND

TIMBER MANUFACTURES & DEALERS LIMITED ::::::::::: THIRD PARTY

RULING

1. The application before the court is a **Notice of Motion** dated **26th April 2012**. The application is filed under Sections 1A, 1B and 3A of the Civil Procedure Act and Order 45 and 51 Rule 1 of the Civil Procedure Rules 2010. The application seeks the following surviving orders:-
 1. *That a date be fixed for inter-partes hearing of this application, at which hearing the Applicants shall seek an order that the Consent orders recorded by this Honourable court on the 29th day of June 2011, and the Decree issued by this Honourable Court on the 3rd day of August 2011 and all other consequential orders arising therefore be set aside, cancelled and/or varied and/or reviewed in such a manner that this Honourable court may direct.*
 2. *That the cost of this application be borne by Grace Wanjiku Mbugua and Peter Chege Kiarie, the Plaintiffs herein and also by the 3rd party herein.*
2. The Application is premised on the several grounds set out therein and is supported by the affidavit of **FLORENCE WAIRIMU MBUGUA** dated **26th April 2012** with its annextures, and a further affidavit dated **11th July 2012**.
3. The application is opposed by all the Respondents. The Plaintiffs/Respondents filed their Replying Affidavit on **31st May 2012** sworn by **GRACE WANJIKU MBUGUA**. The said affidavit has several annextures. The application is also opposed by the 1st Respondent through affidavit sworn by **JULIUS GIKONYO** dated **31st May 2012** also with annextures. The Third Party also opposed the application through an affidavit filed on its behalf by **BRUNO ROSSIELLO** dated **31st May 2012** also with annextures. In addition, the 1st and 2nd Defendants raised a **Notice of**

Preliminary Objection filed in court on **31st May 2012** against the application. The Third Party also filed a **Notice of Preliminary Objection** dated **26th July 2012**.

4. With the leave of the court, parties filed written submissions to the application. The Applicants filed their submissions on **18th November 2013**, the Third Party filed their submissions on **6th March 2013**, the Defendants filed theirs on **6th March 2013** while 1st and 2nd Plaintiffs did that on **6th March 2013**.
5. For the record, the said Preliminary Objections were heard on priority, and by the Ruling delivered on 23rd November 2012, were dismissed paving way for the hearing of this application on its merits.
6. In summary, the nature of the Applicant's application can be put as follows. The Applicants' are the co-administrators together with Grace Wanjiku Mbugua and Peter Chege Kiarie, of the estate of Joseph Kiarie Mbugua pursuant to a Grant of Representation issued by this Honourable Court on 6th August 2007 in High Court Succession Cause No. 784 of 2007. It is alleged by the Applicants that (hereinafter referred to as (**'The House of Florence'**) the firm of advocates known as M/s Judy Thongori & Company Advocates purported to enjoin them (as co-administrators of the estate of Joseph Kiarie Mbugua) in this suit without their knowledge, instructions and/or express consent. The said M/s Judy Thongori & Company Advocates also proceeded to actively prosecute several applications in this suit without their knowledge, instructions and/or consent. M/s Judy Thongori & Company Advocates purported to compromise the suit by agreeing to pay a sum of Kshs.47,500,000/= to the 1st Defendant and to cause a Discharge of two properties, namely the Murang'a Road Property and the Garden Estate Property without their knowledge, instructions or consent. M/s Judy Thongori & Company Advocates agreed to enjoin the third party herein to this suit and proceeded to compromise an intended appeal by the third party in HCCC No. 1048 of 1984 without the Applicants' knowledge, instructions or consent. The said M/s Judy Thongori & Company Advocates agreed to the release of a duly executed discharge of charge in respect to the Garden Estate Property to the said third party without the Applicant's knowledge, instructions or consent of the Applicants.
7. The nature of the 1st and 2nd Plaintiffs/Respondents' (hereinafter referred to as (**'The House of Grace'**) opposition to the application can be summarised as follows. The Plaintiffs in this case were parties in High court Succession Cause No. 784 of 2007 – in the matter of the estate of Joseph Kiarie Mbugua (*deceased*). The properties that constituted the estate of the deceased in the said succession cause were agreed by consent to be distributed to the respective houses by a consent order dated 28th June 2010. In the said consent, the property number LR No. 4894/59 Garden Estate was not mentioned at all. Why was the said property not mentioned at all. The House of Grace believes that the property was not mentioned in the said consent because the estate of the deceased, with a full understanding of the history of the said property, did not regard it as part of the deceased's estate at all. It is apparent from the face of the consent that another property, namely LR No. 209/1605 Murang'a road was allocated to the House of Grace. The striking relationship between the two properties referred to above, that is, LR No. 209/1605 Murang'a Road which was in the name of the deceased and by consent allocated to the House of Grace, on the one hand, and LR. No. 4894/59 Garden Estate which was not mentioned at all in the consent order in the succession cause was that both properties were charged to Consolidated Bank Limited, the 1st Defendant herein, to secure a loan that had been procured by the deceased. It also happened that the deceased had disposed of his interest in number 4894/59 Garden Estate to the third party during the pendency of the said security but the bank made it impossible for the third party to get the property transferred in its name.

Be that as it may, it followed that if the House of Grace redeemed LR No. 209/1605 Murang'a Road, which under the succession cause was distributed to them, the other property LR No. 4895/59 Garden Estate would stand redeemed. In the foregoing context, the logical question is

this, what was the just and logical thing for the House of Grace following redemption of LR No. 4894/59 Garden Estate which did not belong to them and which the estate understood did not belong to it?

The House of Grace believes that the just and logical thing was to pass it over to the party to whom the deceased had sold the property but who had never procured transfer of the same. That is exactly what Grace Wanjiku Mbugua did, and there was nothing fraudulent about this.

8. The Defendants and the Third Party on their part have opposed the application on the grounds that the said Consent and Decree cannot be stayed, varied or reviewed, and that any alleged misrepresentation by the firm of Judy Thongori & Company Advocates cannot affect the legal positions of the Defendants and the Third Party, as they had already acted on the said consent and the effects of their action cannot be now reversed.

9. On 13th March 2014, the parties counsel highlighted their submissions before me, and identified the pertinent issues for the court to determine. I have considered the entire application and the submissions of the parties and the issues for determination. In my view, the following is the issue for determination:-

Whether M/s Judy Thongori & Company Advocates had the instructions and authority to act for the Applicants, Florence Wairimu Mbugua and Silvia Mrugi Mbugua in this suit, and to execute the consent recorded by this court on 29th June 2011.

10. The determination of this single issue, one way or the other, is enough to resolve the dispute herein because it will either give effect to all other actions and conduct of the parties such as the Defendants and the Third Party, or question the legality or legitimacy of those subsequent actions after the consent was recorded. The determination of this issue will also make it not necessary for me to consider other issues raised by both the Applicants and the Respondents.

11. To answer this question I will go to the history of this matter. The late Joseph Kiarie Mbugua instituted the main suit herein seeking a permanent injunction against the Consolidated Bank, the 1st Defendant/Respondent herein, and Graham Investments, the 2nd Defendant herein, from selling, disposing off or selling by public auction the suit premises LR No. 209/1605 Murang'a Raod on 21st Number 2006. Mr. Mbugua subsequently died, and the suit abated on 1st October 2010 one year after this death. It was subsequently revived by the administrators of the deceased estate through an application dated 17th February 2011. The application was presented by Grace Wanjiku Mbugua who claimed to have authority of the other three administrators. This application was necessary to protect the suit property from threatened auction. This application sought that the deceased's name be substituted with that of the administrators, and this was allowed by consent dated 16th May 2011 and issued on 20th May 2011. This is the consent which revived the suit, and the Applicants then, except as it appears, later, never raised their hands against representation by M/s Judy Thongori & Company Advocates. (See page 19 of the replying affidavit of the bank). The Notice of Appointment filed by the firm of Judy Thongori & Company Advocates dated 17th February 2011 stated that the firm was acting on behalf of all the administrators of the estate of the deceased Plaintiff. This appears to have been later denied by the Applicants. Because of this consent, all parties to this suit benefited because the suit was revived. Similarly, the Applicants did not challenge the injunction issued in HCCC No. 784 of 2007. In the matter, M/s Judy Thongori & Company Advocates obtained an injunction which stopped the sale of the estate properties, and all administrators accepted this. This is presumably so because all the administrators were benefitting from the order. Later on, the Third Party was enjoined in the suit by consent after lengthy correspondence between its advocates and advocates on record for the estate of the deceased as per paragraph 14 of the Third Party's Replying Affidavit. The above demonstration shows that at least at some point in those proceedings, the firm of Judy Thongori & Company Advocates represented all the administrators of the estate of the deceased. I have also

carefully perused the court file. I have not come across any Notice of Change of Advocate by the Applicants in relation to any of the matters in which M/s Judy Thongori & Company Advocates have acted on behalf of all the administrators. However, there are correspondence to show that the Applicants had another law firm which apparently was giving them legal advice on the matters pertaining to the issues in this suit. But I have not seen any record that the law firm represented the Applicants in court in any of these matter except the firm of M/s Lawrence M. Mbabu & Associates which came on record for the Applicants in respect of this application vide their application dated 26th April 2012.

12. Prior to the current application, and, when the administrators of the deceased estate were still friendly to each other, they agreed on the division of the deceased property, and by a consent order dated 28th June 2010 and issued on 2nd July 2010 in the High Court Succession Cause No. 784 of 2007, the court confirmed the Grant of Letters of Administration issued to the four administrators of the estate. It was acknowledged in the said consent that the deceased had two wives, namely Grace Wanjiku Mbugua and Florence Wairimu Mbugua, referred to therein as the **House of Grace** and the **House of Florence**. That confirmed Grant detailed how the deceased's estate was to be distributed. As I have earlier on noted, one property LR No. 4894/59 Garden Estate was not mentioned at all in the said confirmed Grant by Consent. It is alleged by the House of Grace that the said property was not mentioned in the confirmed Grant because it did not belong to the estate as it had been sold to the Third Party except that there was still pending the transfer to complete the sale. It is also apparent on the face of the said consent of the confirmation of Grant that another property namely LR No. 209/1605 Murang'a Road was allocated to the House of Grace Wanjiku Mbugua. It is these two particular properties which now appear to cause the administrators not to see eye to eye. It also appears that due to differences in relation to those two properties the Applicant administrators disengaged from being represented in the matters by the firm of Judy Thongori & Company Advocates. This apparent disengagement caused a dilemma to the House of Grace in that the LR No. 209/1605 Murang'a Road which was given to the House of Grace was tied together with the property LR. No. 4894/49 Garden Estate, as the two were given out as security to the 1st Defendant Bank. It also appears that while the House of Grace treated the Garden Estate House as not being part of the estate of the deceased, and the property of the Third Party, the House of Florence regarded the Garden Estate property as part of the estate available for distribution to the deceased dependants. Arising from the said consent, which confirmed the grant, the House of Grace became anxious to discharge the Murang'a Road House since this was given to them. At this stage, and due to apparent different interpretation as pertains to the Garden Estate property, the House of Grace, now leaning heavily towards the firm of Judy Thongori & Company Advocates, started, in earnest, to take serious steps to secure their property. It is also at this stage that the House of Florence became increasingly difficult, going by the content of correspondences between the firm of Judy Thongori & Company Advocates, the firm of Machira & Company Advocates for the Estate, and the firm of P. M. Ndungu & Company Advocates which appear to have been the legal advisors of the Applicants at this stage. From this stage onwards, the tough stance taken by the House of Florence on the interpretation of certain aspects of the Grant, and the determination by the House of Grace to secure their Murang'a Road property widened the differences between the administrators, and when the relevant consent the subject matter of this application was filed in court, their differences reached a boiling point hence this application. The question that now arises is whether at the time the said consent was filed and recorded, the firm of Judy Thongori & Company Advocates had the instructions to commit the Applicants, and the effect of any such commitment on other parties who were not aware of the feud among administrators.

13. Mr. Mbaabu for the Applicants submitted that in her letter dated 10th November 2010 addressed to the 1st Defendant, M/s Judy Thongori & Company Advocates indicated clearly that they were acting for Grace Wanjiku Mbugua and Peter Chege Kiarie and not for the Applicants. In that letter, the advocates stated thus:-

***“We refer to the above matter and wish to inform you that we now act for the 1st house of the late J. K. Mbugua family which is represented by Grace Wanjiku Mbugua and Peter Chege Kiarie.*”**

Please note property LR No. 209/1605 Murang'a Road (P.G.'s) was distributed to the said first house. In that regard, we have our client's instructions to request a meeting between the writer and you. . ."

14. By dint of that letter, Mr. Mbaabu submitted that the law firm of Judy Thongori & Company Advocates did not have the instructions to act for the Applicants in this suit, and indeed, the said firm did not have instructions to execute the consent recorded in court on 29th June 2011. There are actually a series of correspondences between the firm of M/s Judy Thongori & Company Advocates and the Advocates for the estate and those of for the Applicants. While it is clear to me that there was a time in this matter when M/s Judy Thongori & Company Advocates had instructions from all the administrators and acted for all of them, it is also clear that after the initial instructions had been carried out, the administrators disengaged from each other, perhaps due to the different interpretation concerning the Garden Estate property, and of course other aspects of the execution of the confirmed Grant. The submission by the Applicant's Advocates that M/s Judy Thongori never at any time had instructions from the Applicants in this suit is not correct. The divergence in opinion came later on in the proceedings, and specifically when the House of Grace felt it had to take specific steps to safeguard their property being the Murang'a Road property. On this issue it is clear that the House of Florence promised to be difficult, and stayed difficult. A sample of relevant correspondences between M/s Judy Thongori & Company Advocates and M/s Machira & Company Advocates for the estate, and M/s P.M. Ndungu & Company Advocates for the Applicants read as follows:-

Refer to the letter written to M/s Judy Thongori & Company Advocates by M/s Machira & Company Advocates on 6th June 2011:-

"The other aspect of the matter is that our client feels unhappy about the sum of Kshs.45,000,000/= that was agreed upon. Besides the fact that our client was not a party to the Agreement in the said sum of Kshs.45,000,000/= she is also wondering how this figure was arrived at.

You may perhaps be aware that at one time Consolidated Bank of Kenya was ready to take a sum of kshs.20,000,000/= in full settlement of the account. Regarding the penultimate paragraphs of your letter under reference, our client is of the view that you should not enter into any consent in court before the matter is mutually agreed between the parties.

Perhaps you will note that in future, any discussion or any matter arising relating to the Estate of the deceased should involve all the parties."

15. Further, in their letter dated 22nd June 2011 to the said M/s Judy Thongori & Company Advocates, M/s Machira Company Advocates stated as follows:-

"With reference to your two letters dated 13th June 2011 and 20th instant, we regret to inform you that Mrs. Florence Wairimu Mbugua is not and shall not be a party to any consent that you may enter into, as you suggest.

It is our view that you should not have proceeded to enter into negotiations and/or any commitment without consulting Messrs. P. M. Ndungu & Company Advocates, who represent Mrs. Florence Mbugua's house."

16. By a letter dated 20th June 2011 written by M/s Judy Thongori & Company Advocates to M/s Machira Company Advocates, M/s Judy Thongori states, *inter alia*, thus:-

"As we have not heard from you, our clients have instructed us to file a consent in the matter and to look up to the estate for payment of the amount of Kshs.45,000,000/=.

17. By another letter dated 16th April 2011 written by M/s Judy Thongori & Company Advocates to

M/s P. M. Ndungu & Company Advocates, the said advocate *inter-alia*, state thus:-

“On a perusal of the commercial matter that had been filed by the deceased in respect of the above debt in 2006, we found that an application was presented on 31st May 2009 to have the suit declared abated. That on 14th October 2012 Justice Njagi ordered that the suit had abated as prayed and that the same would therefore be dismissed for want of prosecution.

On further perusal of the same we realised the application had apparently been served on the firm of Njoroge Wachira & Company Advocates who were acting for the deceased. A copy of the order and the affidavit of service are attached herewith.

We filed an application to set aside the said order, revive the suit and for injunctive orders against the sale. At that point, it was clear to us that the chances of success were minimal in view of the history of the matter before the deceased’s death and after.

You will recall that we wrote to you on 17th May, 2011 and on 24th May 2011 and when we did not hear from you we recorded a consent on 29th June 2011. Copies of the said letters are enclosed herewith.

In a nut shell, our clients are not asking for the estate to pay the decretal amount and are only asking for the amount that had been agreed as payable to Consolidated Bank. As the said amount is in the Estate Account our clients are at a loss as to why your clients would have difficulty paying the same.

Consequently we have firm instructions to impress upon you the need to have it settled before the 24th April 2012. To that end we have enclosed herewith an application for transfer of funds to Consolidated Bank in respect of Kshs.10,000,000/= and a cheque to support the same.

Kindly have the same documents executed and returned to us urgently.”

18. Even if the firm of M/s Judy Thongori had at one time the instructions from the Applicants in this suit to represent them, the contents of the above correspondence are clear that at one time those instructions were not forthcoming. The tone and texture of the letters from M/s Judy Thongori & Company Advocates clearly indicate that they knew they were not acting for the Applicants, at least as far as the consent under question is concerned. In one of the correspondences I have quoted above, M/s Machira & Company Advocates told M/s Judy Thongori & Company Advocates as follows

“Perhaps you will note that in future, any discussion or any matter arising relating to the estate of the deceased should involve all the parties.”

19. In yet another letter, M/s Judy Thongori & Company Advocates wrote to M/s Machira & Company Advocates, saying:-

“As we have not heard from you, our clients have instructed us to file a consent in the matter and to look up to the estate for payment of the amount of Kshs.45,000,000/=.”

20. The correspondences show that M/s Judy Thongori believed they had to have the consent of the Applicants in order to enter into the consent under question. They were not getting this consent, so they assumed that silence was consent. These correspondences actually betray the position of the firm of M/s Judy Thongori & Company Advocates. It shows that they knew what was right, but chose to do the wrong thing, in order to do the right thing i.e., to file consent and conclude the matter. In their passion to do the right thing, they followed a wrong path. It would have been easier if they actually believed that they had the instructions from the Applicants. But the

correspondences show that they did not only know they had no instructions, but they were also specifically warned by M/s Machira & Company Advocates in their letter dated 22nd June 2011 as follows:-

“With reference to your two letters dated 13th June 2011 and 20th instant, we regret to inform you that Mrs. Florence Wairimu Mbugua is not and shall not be a party to any consent that you may enter into, as you suggest.”

These are telling words, and they cannot escape the attention of any court of law. Clearly, at the point that the consent under question was recorded in court, the firm of M/s Judy Thongori and Company Advocates had no instructions to act for the Applicants.

21. That fact, however, does not of itself invalidate the said consent. The consent which was recorded in court on 29th June 2011 was as follows:-

1. The Plaintiffs do pay to the 1st Defendant a sum of Kshs.47,500,000/= only in full and final settlement of the Plaintiff's loan account with the 1st Defendant.

That the said amount be paid as follows:-

- a. ***The sum of Kshs.13,652,675/= due from the Ministry of Lands and which amount the parties have agreed to be deposited in a joint account in the names of their advocates, be transferred to the 1st Defendant and if the said sum has not been received into this account as at 29.06.2011, the same be transferred to the 1st Defendant as soon as it is put into that account.***
- b. ***The balance being the sum of Kshs.33,847,325/= be paid on or before 31st January 2012.***
2. ***Upon payment of the amount set out in Clause 1 above, the two properties used as security for loans that is to say LR No. 209/1605 Murang'a Road, Nairobi and LR No. 5894/59 Garden Estate Nairobi be unconditionally discharged.***
3. ***The Discharge of Charge and original title document over LR No. 209/1605 Murang'a Road Nairobi be released to the Plaintiffs upon payment of the amount above.***
4. ***The Discharge of Charge in respect of LR No. 4895/59 Garden Estate Nairobi be released to the Purchaser that is Timber Manufacturers and Dealers Limited who have in their possession the original title document.***
5. ***That in default of payment of the sums set out above, the 1st Defendant do sell LR No. 209/1605 Murang'a Road, Nairobi.***
6. ***The intended appeal by Timber Manufacturers and Dealers Limited in HCCC No. 1048 of 1994 be marked as settled in terms of this consent.***
7. ***That each party do bear its costs.***

The consent affected all the parties to these proceedings. It also affected the distribution of the assets under the confirmed Grant in the estate. The consent also brought to finality several issues in this matter. Again all other parties to this matter are satisfied with the consent. It is now the duty of this court to balance the rights of the parties, and to do what is just for all the parties, and more importantly, putting the effect of the said consent into perspective. The fact that a consent is entered into without full instructions of one or more of the parties does not of itself invalidate the consent. Other parties affected by the said consent are the 1st Defendant and the Third Party. The consent was recorded on 29th June 2011 and the House of Grace, the 1st Defendant and the Third Party have acted upon it. Their action have far reaching consequences which this court must consider. Under the consent, the 1st Defendant has been paid its loan balance of Kshs.47,500,000/=. Pursuant to above payment the two properties used as security for loan that is, the Murang'a Raod Nairobi Property, and the Garden Estate Nairobi Property, have since been discharged, and Discharge of Charge for the Murang'a Road, Nairobi, property issued to the House of Grace, and the Discharge of Charge for the Garden Estate Nairobi, property issued to the third party who has also paid Kshs.1,000,000/= to the estate of the deceased. The intended appeal by the Third Party has also been settled by the said consent. What then ought a court like mine do under the circumstances?

22. Apart from the Applicants, other parties to this suit were not aware of the fact that M/s Judy Thongori & Company Advocates did not have instructions from the Applicants to enter into the consent. The 1st Defendant and the Third Party entered into that consent believing that all counsel had full instructions. Again, I believe that the firm of M/s Judy Thongori in entering the said consent was acting *bonafide*, and more so to secure the charged properties. They must have been seriously frustrated by the none cooperation of the Applicants. Generally, an advocate acting *bonafide* in the interest of his or her client is taken to have instructions to bind his client. In the case of **DIAMOND TRUST BANK OF KENYA LIMITED – VS – PLY & PANELLS LIMITED & OTHERS CASE NO. 243 OF 2002**, the Court of Appeal held that “. . . *where the consent judgement impugned has been executed . . . the courts are less likely to set aside consent judgement.*” Lord Denning in **F AND G SYKES (WASSEX) LIMITED – VS FINE FARE [1967] LLOYDS REP. 53**, said:-

“In a commercial agreement the further the parties have gone on with their contract the more ready are the courts to imply any reasonable terms so as to give effect to their intention. When much has been done, the courts will do their best not to destroy a bargain. When nothing has been done, it is easier to say there is no agreement between the parties because the essential terms have not been agreed.”

23. Clearly, to the extent that the consent judgement herein has been performed the strict legal position would favour the submission that the consent should not be interfered with. I agree. However, before the court is a highly contentious family matter, the resolution of which should as far as possible seek to heal rather than to open any wounds, and to promote family harmony. It appears to me that paramount for the House of Grace was the need to safeguard their Murang'a Road, Nairobi, property. Indeed, the Applicants are not claiming any interest in this property. There also appears to me to be no serious disagreement with the payment to the 1st Defendant of Kshs.47,500,000/= pursuant to which the two securities were discharged and released, although the House of Florence deemed the payment excessive. However, loans accrued interest, and the submission that the sum was actually negotiated downwards from over Kshs.60,000,000.- is not seriously disputed.

24. The House of Florence, however, disputes the allocation of the Garden Estate, Nairobi, Property to the Third Party, on the grounds that there is a dispute over that property in the Court of Appeal and that in any event the said property is worth over Kshs.100,000,000/= and cannot just be given away by the House of Grace to the Third Party without the Applicants consent.

25. I have decided, that in the interest of harmony in the family, this court will sever the consent into two. Actually, the said consent judgement is severable in contractual terms. There is an aspect which addresses purely family issues, and there is another aspect which address Third Party issues. In the interest of family justice and peace, I will leave intact those aspects of the consent, which settle the family issues with the 1st Defendant Bank. However, these aspects which deal with the Third Party will be severed.

26. In the upshot, the Notice of Motion application dated 26th April 2012 is determined as follows:-

a. ***The Consent/Decree given in court on 29th June 2011 shall remain in force except as varied hereunder:-***

Clause (4)

i. ***The Discharge of Charge in respect of LR No. 4894/59 Garden Estate Nairobi be released to the Estate of JOSEPH KIARIE MBUGUA (deceased) pending the resolution in the Court of Appeal or in any other forum, of any disputes thereon.***

ii. ***Related to this Clause is an order that the Kshs.1,000,000/= alleged to have been paid by the Third Party to the estate of the deceased in order to secure above discharge, if correct, shall be refunded to the Third Party within 7 days from today.***

Clause (6)

The intended appeal by the Third Party – Timber Manufacturers and Dealers Limited in HCCC No. 1048 of 1994 shall proceed as intended.

- b. ***That parties shall bear their own costs for this application except that the Third Party's costs herein shall be paid by the House of Grace.***

DATED, READ AND DELIVERED AT NAIROBI THIS 19TH DAY OF MAY 2014

E. K. O. OGOLA

JUDGE

PRESENT:

Njiru holding brief for Mbabu for Florence Wairimu Mbugua & Sylvia Murugi Mbugua

Thuku for 1st Respondent (Consolidated Bank of Kenya Ltd.)

Ogot holding brief for Ongoye for Grace Wanjiku Mbugu & Peter Chege Kuria

Okwiri for Third Party

Teresia – Court Clerk