



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Civil Suit 26 of 2010**

EBBY MORAA ARADI.....1<sup>ST</sup> PLAINTIFF  
MARY ATIENO ARADI.....2<sup>ND</sup> PLAINTIFF  
STEVE BIKO ARADI.....3<sup>RD</sup> PLAINTIFF  
CHARLES CHAHYA ARADI.....4<sup>TH</sup> PLAINTIFF  
VERSUS  
BARCLAYS BANK (K) LTD.....DEFENDANT

**RULING**

The plaintiffs are widows and sons of the late Manoah Kisame Aradi (the deceased) who died on 7<sup>th</sup> May 2006. They claim in their plaint that the defendant, to whom the deceased was prior to his death indebted, has clandestinely disposed of the deceased's property situate in Kisumu and known as **Title No. Kisumu Municipality/Block 7/51** (the Kisumu property). Without accounting for the proceeds thereof the defendant has again advertised for sale the deceased's property in Nakuru known as **Title No. Nakuru Municipality Block 11/53** (the Nakuru property). They have contemporaneous with the filing of the suit applied for a temporarily injunction to restrain the defendant from selling the Nakuru property until it accounts for the proceeds of sale of the Kisumu property and supplies the plaintiffs with the statement of the deceased's account showing how the balance of Kshs.90,242,244.15 that the defendant demands is arrived at.

The application is strongly opposed. In his replying affidavit Ken Kiurah, the Co-operative Recoveries Manager, dismissed this application as one of the frivolous applications that the plaintiffs have kept filing whenever the defendant seeks to realize its securities. He averred that prior to his death the deceased acknowledged owing the defendant a sum of Kshs.18,505,423.70 as at 22<sup>nd</sup> October 2001. As the deceased failed to repay that amount it continued to attract interest at 12% above the defendant's base rate. As at 11<sup>th</sup> February 2010 the amount owing had risen to Kshs.94,313,544.46. He said the Kisumu property was sold for Kshs.7,000,000/- and the same was credited to the deceased's account on 6<sup>th</sup> April 2009. He denied having received any demand from the plaintiffs for bank statements and said the defendant has always sent the statement to them.

At the hearing of the application I asked counsel for the defendant to find out if this is not one of the none performing accounts affected by **Section 44A** of the **Banking Act**. Miss Karanja for the defendant thereafter submitted that as at 1<sup>st</sup> May 2007 when that provision came into effect the amount due from the deceased's estate was Kshs.48,686,451.89. She said double that amount has provided by that provision is about Kshs.97,000,000/- which is more than what the defendant is demanding. She therefore urged me to dismiss this application with costs.

I have considered the application. The plaintiffs are not disputing the fact that the deceased's estate is indebted to the defendant. They are also not disputing the defendant's right to realize the security. Their complaint is that the defendant has failed to supply them with the bank statements of the deceased's account or accounted for the proceeds of sale of the Kisumu property. That is the basis for their application for injunction.

After the replying affidavit was filed showing that the Kisumu property was sold for Kshs.7,000,000/- and the same was credited to the deceased's account, they did not raise any issue on that point. There is nothing on record to show that they have demanded for the statements of account and the defendant has refused to supply them with the same. Having established that the amount the defendant is claiming is within the provisions of **Section 44A** of the **Banking Act**, I find that there is no merit in the plaintiffs' application. Consequently I dismiss it with costs.

DATED and DELIVERED this 2<sup>nd</sup> July, 2010.

**D. K. MARAGA**  
**JUDGE.**