



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

**Civil Suit 46 of 2008**

JOHNSON MAKORI ONDUKO .....} PLAINTIFFS

BERNARD GESORA MAKORI .....}

VERSUS

COOPERATIVE MERCHANT BANK LTD .....} DEFENDANTS

EMERG INVESTMENT LIMITED .....}

**RULING**

**NO. 1**

**I: Civil Practice and Procedure**

1. The main suit herein concerns land. It is land situated in Kericho being LR. 631/IV/60 whereby there existed a sale agreement. The plaintiffs wished to have specific performance.
2. The main suit was originally filed in Nairobi. It came before me when on 19<sup>th</sup> April, 2009 I was informed that the plaintiff No. 1 had passed away. No substitution had been effected.
3. The respondents/plaintiffs advocate stated he now had instructions on the matter. He agreed no action had been taken in this matter. He then admitted and stated that the awards to a plaint filed herein was done without the leave of the court.

**II: Application to struck out amended plaint**

4. The applicants/respondents prays through the Chamber Summons 24<sup>th</sup> June, 2009 application to have the amended plaint struck out.
5. The respondent concedes but to be given leave to have the main plaint remain in place.

**III: Findings**

6. No. leave has been sought to file the amended plaint. There has been no substitution of 1<sup>st</sup> plaintiff although the 1<sup>st</sup> plaintiff having died held a power of Attorney. No leave was used or applied to enjoin the 2<sup>nd</sup> plaintiff.

7. I award costs to the applicant/2<sup>nd</sup> defendants.

**DATED** this 19<sup>th</sup> day of February, 2009 at **KERICHO**

**M.A. ANG'AWA**

**JUDGE**

**Advocates**

S.K. Bundotich advocate instructed by M/S Kale Maina & Bundotich advocate for the 2<sup>nd</sup> defendant/Applicant – present

C.O. Odongo advocates from Ochichi & Co. advocates instructed to hold brief for M/S Muthaura Kiome & Mwarania advocates and Aminga Opiyo & Masese advocates for the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff/Respondents respectively – present

N/A for M/S Kyalo & Associates advocate for the 1<sup>st</sup> defendant