

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 649 of 2001

HARRISON CHARLES KIMERIAH:.....PLAINTIFF

VERSUS

HOUSING FINANCE CO. OF KENYA:.....DEFENDANT

R U L I N G

The Defendant's Notice of Motion dated 11th September, 2007 is brought under Order III Rule 9A and Order 2 Rule 1 of the civil Procedure Rules praying for leave for M/S Miller & Company Advocates to come on record as acting for the Defendant in place of M/S Kiplan & Stralton Advocates and for the costs of the application. It is brought on the grounds inter alia, that the suit herein abated by virtue of the death of the Plaintiff and subsequent dismissal of an application by a personal representative of the Plaintiff seeking to revive the suit and that such abatement and/or dismissal of the said application determined the suit and has the effect of a final judgment of the suit. The application is supported by the affidavit of **Kennedy O. Ochieng** an Advocate of court practicing as such in the firm of Miller & company Advocates.

At the hearing of the application **Mrs. Karani** learned Advocate for the Defendant applicant prayed that an order of injunction registered against the title as LR. No. 7793/6 by the Plaintiff be discharged so that the Defendant/Applicant could deal with the said parcel of land in exercise of its statutory power of sale. Learned counsel urged the court to ignore the Replying Affidavit by the widow of the Plaintiff as the suit had abated and the widow's application to revive the suit and for her to be substituted had been dismissed.

The application is opposed and it was submitted for the Respondent that the application is incompetent and bad in law in that there is no suit subsisting and the application cannot be entertained.

I have considered this application. Firstly the application if for leave for the new advocates to come on record for the Defendants. It has nothing to do with the court granting an order discharging an order for injunction granted in the suit while the suit subsisted. Submissions by counsel in support of the application are therefore misplaced and irrelevant. More importantly the suit abated as admitted in the application under consideration and an application for its revival and substitution of the Plaintiff was not successful. That marked the end of that suit. There is therefore no suit under which the present application could have been brought. The application is consequently incompetent and is struck out.

Orders accordingly.

DATED AT ELDORET THIS 11TH DAY OF MAY, 2009.

P.M.MWILU

JUDGE

DELIVERED AT NAIROBI THIS 15TH DAY OF MAY, 2009.

J.W.LESIIT

JUDGE

IN THE PRESENCE OF:-

.....Court clerk

.....Advocate for the Applicant

.....Advocate for the Respondent.