
**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Case 252 of 2006 (OS)

THE CO-OPERATIVE BANK OF KENYA LIMITEDAPPLICANT

VERSUS

JANE WAMBUI WANJEGERESPONDENT

RULING

The present application by way of a Chamber Summons dated 18th August, 2006 brought under Order XXXVI Rule 8A of the Civil Procedure Rules. The Chamber Summons seeks two prayers:-

- 1. THAT this Honorable Court do give directions herein.**
- 2. THAT the plaintiff/applicant can exercise the statutory power of sale after effecting service of the statutory notice upon the defendant/respondent**

This action was started by way of Originating Summons and the prayers in that Originating Summons sought the determination of the court to the following questions:-

- 1. Whether the Respondent/defendant herein being the widow, is the legal representative and/or next of kin of the Chargor, Peter Wanjege Ngugi who died on 29th September, 2003.**
- 2. Whether the Applicant/plaintiff herein should effect the necessary statutory notice before exercising the Statutory Power of Sale on the Respondent/Defendant as the legal representative and or next of kin of the charger, who is now deceased.**

The Applicant's advocate informed the court that this matter is related to another matter in this High Court Division namely HCCC 213 of 2003. The counsel requested the court to refer to that file where he stated documents in support of the Originating Summons are to be found. It is important to state that the Originating Summons filed herein was not supported by the affidavit. The Chamber Summons the subject of this ruling was supported by an affidavit of service. That service related to the service of the Originating Summons upon the respondent. It is clear that the orders which the applicant seeks by virtue of the chamber summons would determine this matter finally and the Originating Summons would not need to proceed. The Applicant seeks a very far reaching and drastic order in seeking the court's leave to serve statutory notice upon the Respondent on behalf of the deceased debtor. I am of the view that the application is incompetent because it cannot be that an applicant would come to court and request the court to refer to another court file for its determination of an application. The application is also incompetent because I am of the view that the Applicant should have moved under the law of Succession Act to have the court determine who would be the Administrator of the deceased so that the Applicant can proceed to serve the statutory notice upon such a person. The orders upon which the applicant has moved with regard to the present Chamber Summons cannot empower this court to grant the orders that are sought. For the above reason the application does fail and is dismissed with no orders as to costs.

MARY KASANGO

JUDGE

Dated and delivered this 2nd day of November, 2006.

MARY KASANGO

JUDGE