

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL DIVISION, MILIMANI
CIVIL CASE NO. 151 OF 1999

JEREMIAH KAMONDO.....PLAINTIFF
VERSUS
AGRICULTURE FINANCE
CORPORATION.....DEFENDANT

R U L I N G

The Plaintiff herein, JEREMIAH KAMONDO, is said to have died on 29th August, 2002. A copy of his death certificate is exhibited in the affidavit of one GREGORY MUTAI, a legal officer of the Defendant, sworn in support of the chamber summons dated 12th November, 2004. In that application the Defendant seeks an order for costs against the estate of the deceased plaintiff. The application is brought under Order 23, Rule 3(2) of the Civil Procedure Rules.

The Plaintiff's suit against the Defendant was for an injunction to restrain the Defendant from advertising for sale and/or alienating the suit property, L.R. LIMURU/KAMIRITHU/373, a declaration that the Defendant's conduct was so inequitable as to disentitle it to its rights under the loan agreement between the parties, and for damages, *inter alia*. Under Section 2(1) of the Law Reform Act, Cap. 26, the cause of action in this suit survived the Plaintiff's death for the benefit of his estate. As no application was made within one year since the Plaintiff's death for substitution of his legal representative in the suit, the suit has abated so far as the deceased Plaintiff is concerned. I will therefore award the costs of the suit (inclusive of the costs of this application) to the Defendant to be recovered from the estate of the deceased Plaintiff. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF MARCH, 2005.

H. P. G. WAWERU

JUDGE

DELIVERED THIS.....DAY OF MARCH, 2005.