



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL SUIT NO. 1177 OF 1999**

**SAMUEL MUSAU NDUNDA ..... 1ST PLAINTIFF**  
**JOSEPH MUTISO ..... 2ND PLAINTIFF**  
**VERSUS**  
**THE CO-OPERATIVE BANK OF KENYA LTD. ... 1ST DEFENDANT**  
**NGURU ENTERPRISES ..... 2ND DEFENDANT**

**RULING**

The plaintiff in this matter has lodged this application for an order that party and party costs taxed at Shs.72,250/= and payable by the plaintiff to the defendant be certified as fully paid by the plaintiff. The ground upon which the application is made is that the defendants' Advocates have already been paid Shs.84,630/= from the plaintiffs' mortgage account as costs. In attempt to substantiate that claim, the plaintiff have annexed to an affidavit sworn on 19.12.2000 by the 1st plaintiff Samuel Musau Ndunda a statement of the plaintiffs' account with the defendant which shows that on 23.12.1999, some Shs.84,630/= was debited to the account and paid to M/S Onyango Ohaga & Co. Advocates. There is nothing in the statement to show that the debit was in respect of the party and party costs in this matter. As the plaintiffs have not tendered any other evidence to connect the debit with the case before court, what the 1st plaintiff states in his affidavit in support of this application is, at best, mere speculations and conjecture. The assertions have no factual basis.

There being no cogent evidence to support the allegations made by the 1st plaintiff in his affidavit, the application is clearly misconceived and incompetent. It is for that reason dismissed with costs.

**Dated at Nairobi this 12th day of January, 2001.**

**T. MBALUTO**  
**JUDGE**