

REPUBLIC OF KENYA

IN THE HGH COURT OF KENYA AT MURANG'A

MISC CIVIL APPLICATION NO 100 OF 2013

KAMAU MUHIA.....APPELLANT

VERSUS

AGRICULTURAL FINANCE CORPORATION.....RESPONDENT

PRELIMINARY RULING

1. The Applicant herein has sought by **notice of motion dated 4th November 2013** leave to appeal out of time against a decree of the lower court passed on 18th July 2013. There does not appear to be any supporting affidavit; at any rate the supporting affidavit referred to in the application is not in the court record. The application however contains grounds therefor on its face.
2. The Respondent has opposed the application by **grounds of opposition dated and filed on 7th May 2014**. There is no replying affidavit; it has been pointed out in the grounds of opposition that no supporting affidavit was served. In the Applicant's undated **reply to grounds of opposition filed on 01/12/2014** the Applicant has assented that the supporting affidavit was served on 15th July 2014; but no evidence of such service was tendered.
3. At the hearing of the application, its competency was not challenged upon the ground of want of a supporting affidavit. All the same, as the application is based upon certain alleged facts, those alleged facts must be certified by affidavit.
4. In the interests of justice therefore, I will direct that the Applicant do file and serve a supporting affidavit within 14 days of today. The Respondent shall be at liberty to file and serve a replying affidavit within 14 days of service of the supporting affidavit. At the delivery of this preliminary ruling I shall give directions as to further hearing of the application. Costs will be in the cause. It is so ordered.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT AT MURANG'A THIS 5TH DAY OF JUNE 2015

H. P. G. WAWERU

JUDGE