



**REPUBLIC OF KENYA**

**HIGH COURT AT NAIROBI (NAIROBI LAW COURTS)**

**ENVIRONMENTAL & LAND CASE 660 OF 2011**

**PRISCILA WAMBUI KAMAU .....PLAINTIFF**

**VERSUS**

**MARGARET WAMBUI KAMAU .....DEFENDANT**

**RULING**

The matter coming up for determination before me is the Plaintiff's Notice of motion application dated 21/1/13 brought under Section 1A, 3 and 3A of the Civil Procedure Act and Section 66 of the Law of Succession Act. It seeks the following orders:-

1. This Honourable Court be pleased to order the manager, Agricultural Finance Corporation, Muranga Branch to furnish this Honourable Court with the copies of payment statements, vouchers and/or entries of payment of Loan Account No. 260723, Samuel Kamau Karuthui (deceased) domiciled thereat from the time the loan account was opened to repayment of the said loan in full for the purpose of these proceedings.
2. That this Honourable Court be pleased to vacate its order issued on 18/7/12 in so far as it required this Application to be served upon the Personal Representatives of the estate of the said Samuel Kamau Karuthui (deceased).
3. That costs be provided for.

The said application is premised on the grounds appearing on the face of it and the Supporting Affidavit of David Kamau Githinji sworn on 21/1/13 in which he swore that at the heart of the main suit is the Plaintiff's averment that the Defendant took advantage of Samuel Kamau Karuthui's poor mental health to procure an admission from him in Thika Chief Magistrate Civil Case No. 154 of 2001 leading the said court to issue a decree ordering the transfer of land parcel No. Loc. 2/Makomboki/416 (hereinafter referred to as "the Suit Property") to the Defendant. He further swore that the Plaintiff has received information that the said loan had been repaid in full as far back as 1991 by the said Samuel Kamau Karuthui (deceased). He further swore that he believes that the records of the said loan account are extremely critical to unraveling the issues at the heart of this suit. He further swore that no grant of letters of administration have been taken out in respect of the estate of Samuel Kamau Karuthui (deceased). He further indicated that it is common ground that the Plaintiff and the Defendant are the only surviving spouses of the said Samuel Kamau Karuthui (deceased) and are therefore at law first in priority as personal representatives of his estate. He further stated that it is therefore not necessary to serve them with this application as they are already parties in this suit.

The application is contested. The Defendant filed his Replying Affidavit sworn by herself on 19/2/13 in which she stated that the application is frivolous in that any records from the Agricultural Finance Corporation would not indicate her as the payee of the loan since she was not the Principal debtor

although she is the one who produced the money to repay the loan and her deceased husband entered into the consent judgment and attended the Land Control Board to transfer the Suit Property to her on that understanding as he was well aware that she is the one who paid the money to redeem the Suit Property. She further stated that the application is premature as no personal representatives of the estate of her late husband have been appointed.

Both Counsels for the Plaintiff and the Defendant made their oral submissions before this court on 17/4/13 all of which have been taken into consideration.

To my mind, this is a simple application seeking a court order to enable the Plaintiff/Applicant access evidence in the form of bank records which would assist her to make her case against her co-wife and Defendant.

Section 1A of the Civil Procedure Act provides that the Overriding Objective of that Act is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act. It further states that the court shall seek to give effect to that overriding objective.

This court is bound to oversee the expeditious disposal of this matter. This court considers that every effort expended by any party to this suit to seek as much evidence as it is possible to obtain to assist this court in arriving at a just decision fulfills the stated overriding objection. In fact, this court finds that in doing so, such a party shall be assisting the Court to further that overriding objective.

It is with this in mind that this court regards the Plaintiff's application herein. Accordingly, this court allows the application. Costs shall be in the cause.

**SIGNED AND DELIVERED AT NAIROBI ON THE 3<sup>RD</sup> DAY OF JUNE 2013**

**MARY M. GITUMBI**  
**JUDGE**