



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 369 of 2009**

ALFRED KARANJA.....PLAINTIFF/APPLICANT

Versus

THE COMMISSIONER OF POLICE.....1ST DEFENDANT/RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND DEFENDANT/RESPONDENT

RULING

The Plaintiff is the Applicant in the Chamber Summons dated 13th November 2009 praying for orders

“THAT this Honourable court be pleased to strike out the defendant’s defence dated 19th October 2009 and leave to enter interlocutory judgment on liability against the defendants herein.”

There are two Defendants in the suit but one written statement of defence dated 19th October 2009 was filed by the 2nd Defendant the Attorney General on 28th October 2009.

Mr. Kariuki, learned Counsel who prosecuted the Chamber summons before me informed me that service of this Chamber Summons, and also relevant hearing notice, had been effected upon the Attorney General but there had been no response from both Defendants/Respondents who have also not attended hearing of the Chamber Summons before me. In the circumstances what I have on record concerning Chamber Summons dated 13th November 2009 is one sided from the Plaintiff Applicant only except that the Respondents’ defence dated 19th October 2009 is also on record and I have to look at it.

This Chamber Summons is stated brought under Order VI Rule 13 (1) (b), (c) and (d), Rules 7 and 9 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and all enabling provisions of the law.

The Court heard Counsel submit on the grounds in the body of the Chamber Summons the supporting affidavit, but what puzzles me is that though the Applicant did not include ground (a) of Order VI Rule 13 (1) among the provisions under which the Chamber Summons is brought as seen from the opening part of the Chamber Summons on the first page, grounds in the body of the Chamber Summons prominently include ground (a) of Rule 13 (1) without any apology in this Chamber summons where the Applicant seems to think must include not only every ground under Rule 13(1) but also other grounds which do not fall within the said Rule 13 (1).

Since that is the position, my view is that instead of the Applicant accusing the Respondents of having filed a defence which offends the whole of Rule 13 (1), the Applicant is the one to be accused of having filed a Chamber summons dated 13th November 2009 offending the whole of Rule 13 (1) of Order VI of the Civil Procedure Rules.

A proper application under Order VI Rule 13 (1) should choose a ground, out of grounds (a) to (d) which is relevant in the circumstance of the case only and be able to prove it. If more than one ground, select those grounds only and prove each.

Mere mention of those grounds without relevant and sufficient evidence proving each ground mentioned will not enable the Applicant obtain the orders prayed for and that is what the Applicant in this Chamber Summons is doing as I do not see evidence making the Defendants' defence in this suit – scandalous, frivolous or vexatious. I do not find evidence making that defence prejudice, embarrass or delay the fair trial of the suit herein. I do not find evidence of abuse of the process of the court.

If anything, I find that defence raising a number of issues which should go to trial. Why not set this suit down for hearing and let evidence be adduced at the hearing?

The fact that a criminal case was dismissed does not necessarily constitute a ground for a walk over in a relevant civil suit. No constitutional court declared anything done in those criminal proceedings unconstitutional and what the subordinate court may have said on that issue did not amount to a verdict by a constitutional court.

I would say more but I think what I have already said is sufficient to conclude this ruling.

Accordingly, this Chamber Summons dated 13th November 2009 is hereby dismissed with no order as to costs.

Dated this 30th day of April 2010.

J.M. KHAMONI

JUDGE

Present

Wachira, Mburu & Co. Advocates for the Applicant
Court Clerk: Kabiru