



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 134 of 2010

- 1. DURRAN INVESTMENTS LIMITED)
- 2. ARLEEN MBURU).....PLAINTIFFS/APPLICANTS

Versus

- 1. CHRISTOPHER KANYINGI KIBE)
- 2. JOEL KIBE).....DEFENDANTS/RESPONDENT

RULING

I was to begin hearing of the Plaintiff’s chamber Summons dated 9th March 2010 prosecuted by Dr. John Khaminwa when the Defendant’s Counsel M/s Githinji raised a preliminary objection not only against the Chamber Summons but also against the Plaint stating that they both be struck out. The Preliminary Objection dated 16th March 2010 had been filed and served.

From what was brought to my attention during the hearing of the Preliminary Objection, I found no evidence or sufficient evidence proving:

- 1. That the Plaintiff’s suit and the Chamber Summons were frivolous, vexatious and an abuse of the process of the court;
- 2. That this court has no jurisdiction to hear and determine issues in the suit simply because criminal prosecution could also be maintainable for determination – concerning same matter;
- 3. That the verifying affidavit in support of the suit is fatally defective because provisions of Order VII Rule 1 (1), (2) and Order III rule 2 of the civil Procedure Rules have not been complied with;
- 4. That the supporting affidavit of Arleen Mburu sworn on 9th March 2010 is fatally defective and incompetent for failing to comply with Order III Rule 3 of the Civil Procedure Rules.

That being the position, I do find that this is a preliminary objection which, though rightly raised, has no merits to sustain it. The said Preliminary Objection is therefore dismissed with costs to the Plaintiffs.

Dated this 28th day of April 2010.

J.M. KHAMONI
JUDGE
Present:

.....for the Applicants
.....for the Respondents
Court Clerk: Kabiru