

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANICOMMERCIAL COURTS)
Civil Case 513 of 2009

JULIUS NDUNGU KABEREREPLAINTIFF
VERSUS
CHARLES MUNGAI NGUREDEFENDANT
R U L I N G

By this application, the plaintiff seeks an order that this Honourable Court be pleased to give directions as to the hearing of the Originating Summons dated 20th July, 2009. He also prays that this matter do proceed by way of affidavit evidence. The application is made by a Chamber Summons taken out under **Order XXXVI Rule 8A** of the **Civil Procedure Act** and all other enabling provisions of the law.

The Defendant herein was served with copies of the certificate of urgency, the Chamber Summons, the supporting affidavit and Originating Summons on 28th July, 2009 but did not enter appearance. Given the love that some Kenyans are reputed to have for both land and money, it is very strange that the Respondent herein did not enter appearance to defend a suit in which he stood either to get back his land or the monetary value in respect thereof, which run into millions of shillings. Yet, at one point he had refused to accept the balance of the purchase price stating that the sale agreement had been terminated upon expiry of the completion period.

In a nutshell, the facts of this case are very involving, and in the interests of justice I think that it would be best if the matter was subjected to oral evidence in respect of which the Applicant would be subjected to some questions, even if that might be by the court alone.

By reason of the above, I direct that this application be heard by *viva voce* evidence. For what it is worth, I also direct that the hearing notice be served upon the Respondent preferably by a different court process server, in sufficient time to enable him attend court if he is so minded.

Orders accordingly.

DATED and **DELIVERED** at **NAIROBI** this 22nd day of April, 2010.

L. NJAGI
JUDGE