



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**Environmental & Land Case 1484 of 2007**

**DANIEL GATHIRA.....APPLICANT/PLAINTIFF**

**Versus**

**CALASINA JUMA OJIAMBO.....RESPONDENT/DEFENDANT**

**RULING**

This is a ruling in Chamber Summons dated 29<sup>th</sup> September 2008 where the Applicant is praying for orders

“THAT the occupants of Habari Stores Limited on LR No. 209/3812 be forcefully evicted and possession revert to the Plaintiff.”

The Applicant also prays for costs.

The Chamber Summons is brought under Order XXI Rule 86 of the Civil Procedure Rules and Section 3 A of the Civil Procedure Act.

There was no appearance for the Respondent although the Applicant filed relevant affidavit of service. Neither replying affidavit nor grounds of opposition filed as the Respondent does not seem to see anything in this suit.

This is therefore a Chamber Summons I should have granted as I note that the Applicant is the Plaintiff in this suit while the Respondent is the Defendant in the suit.

But I also note a few problems and those are problems created by the Plaintiff himself and problems which are making him not enjoy fruits of the many court orders he is obtaining.

Firstly, the Plaintiff keeps on filing one case after another without prosecuting any of those cases to conclusion. What he does is to obtain interlocutory or interim orders he does not also know how to use. He even has a case in the Business Premises Rent Tribunal No. 164 of 2004 apparently undetermined.

Secondly, with those several cases pending and a number of interim or interlocutory orders in his favour being obtained, the Plaintiff does not realize that each court order can only be enforced in the suit in which that order was obtained. He sometimes therefore goes to a wrong suit to enforce a court order not obtained in that suit.

Thirdly the Plaintiff having obtained a court order he can enforce when disobeyed, he would see such an order disobeyed, stay for sometime without taking necessary step to enforce the order to finality; he would then go to court with a fresh application seeking fresh orders as if the orders already obtained are not sufficient. In this Chamber summons, for example, it has been filed because

“1) The Respondent/Defendant continue to disobey orders issued by this Honourable court on the 11<sup>th</sup> January 2005 .....

2) That the Respondent/Defendant remains at large despite being committed to jail by this Honourable court on 26<sup>th</sup> July 2006.....”

The Defendant has disobeyed another court order dated 24<sup>th</sup> July 2006. There are more court orders.

Those orders were not from this suit No. 1484/2007. There is HCCC No. 546/2004. Another is HCCC No. 1882/2004. Another is HCCC No. 1378/2004. There is also No. 1483/2007.

Fourthly, and let me make this one the last reason although there are more, the people sought to be evicted in the prayer in this Chamber Summons quoted earlier in this ruling are not party in this suit. They have not therefore been served with the Chamber Summons and do not know what is being said in this Court against them.

From what I am saying, this is a Chamber Summons I should not grant even though there is no opposition to the Chamber Summons on record.

Accordingly, I do hereby dismiss the Chamber Summons dated 29<sup>th</sup> September 2008 and there will be no order as to costs.

Dated this 27<sup>th</sup> day of November 2009.

**J.M. KHAMONI**

**JUDGE**