



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**CIVIL CASE 677 OF 2005**

**JOHN KURIA MATHENGE T/A ABERDARE FILLING STATION ....**  
**PLAINTIFF/RESPONDENT**

**Versus**

**CALTEX OIL (KENYA) LTD .....1<sup>ST</sup>**  
**DEFENDANT/RESPONDENT**

**GALLANT AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT/RESPONDENT**

**SAMUEL GITONGA KANJA**

**(INTENDED INTERESTED PARTY/DEFENDANT) .....**  
**APPLICANT**

**RULING**

**In this Chamber Summons** dated 26<sup>th</sup> September 2007, the Applicant Samuel Gitonga Kanja, also referred to as Intended Interested Party/Defendant, wishes to be joined in this suit as a defendant on the ground that he purchased the suit property at a public auction and paid the full purchase price of the suit property and that he was a *bona fide* purchaser for value without notice.

The Applicant's application is supported by the First Defendant/Respondent. The Second Defendant did not show interest in this Chamber Summons. But the Plaintiff strongly opposes the application on the ground that the Applicant has not produced evidence to show that he purchased the suit property as alleged.

In my considered view, even if it is accepted that indeed the Applicant has produced no evidence to show that he bought the suit property at an auction sale and that he bought the property as a *bona fide* purchaser without notice, that need not worry the Plaintiff at the moment when the Applicant is simply expressing his interest in this suit.

As evidence to prove the existence of the Applicant's interest will be necessary only during the hearing of the main suit and to-day Order 1 rule 10 (2) of the Civil Procedure Rules allows this court

***"either upon or without the application of either party, --- (t0) order --- that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all questions involved in the suit, be added";***

this Chamber Summons be and is hereby granted as prayed except with regard to the costs of the Chamber Summons which shall be costs in the cause.

Dated this 26<sup>th</sup> day of October 2007.

**J. M. KHAMONI**

**JUDGE**

**Present**

Mr. Gachie for Mr. Mathenge Gitaga for the Plaintiff

Court Clerk – Kipkurui

Further Order: Upon oral application by Mr. Gachie, Chamber Summons dated 26.6.2007 is now fixed for hearing interpartes on 13.11.2007 before any other Judge and the interim orders therein therefore extended till that date.

Hearing Notice to issue.

**J. M. KHAMONI**

**JUDGE**

**26.10.07**