



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**(NAIROBI LAW COURTS)**  
**CIVIL CASE 1229 OF 2004**

**WINFRED WARUGURU MEPUKORI) .....PLAINTIFFS**  
**KENNETH MOIPAN MEPUKORI (Personal )**  
**Representative of GEORGE MEPUKORI PERTET)**

**VERSUS**

- 1. KAWABOIYA INVESTMENTS CO.LIMITED.....DEFENDANT**
- 2. JAMES MATHEKA .....DEFENDANT**
- 3. JOHN WANGONGU.....DEFENDANT**
- 4. MACHARIA MOREGI.....DEFENDANT**
- 5. MWETHYA WOMEN GROUP.....DEFENDANT**
- 6. CHRISTINE GATHONI.....DEFENDANT**
- 7. KANGA MUGO.....DEFENDANT**
- 8. SERA MULWA .....DEFENDANT**
- 9. TOM MUSOKI MWATU.....DEFENDANT**
- 10. KALULU MWATU.....DEFENDANT**
- 11. PHILIP MWATU.....DEFENDANT**
- 12. JOEL KOLI.....DEFENDANT**
- 13. BOSCO MUOKI.....DEFENDANT**
- 14. MUOKI'S BROTHER.....DEFENDANT**
- 15. STEPHEN MUCHAI.....DEFENDANT**

16. NZIOKA NGUI.....DEFENDANT
17. MUKULU KILONZO .....DEFENDANT
18. JOEL MBAI.....DEFENDANT
19. MUIRURI NGUGI.....DEFENDANT
20. THUKU WANGONDU.....DEFENDANT
21. MUOKI WAMBUA.....DEFENDANT
22. KIKONDU MUINDI.....DEFENDANT
23. SHEM MAKUTHI.....DEFENDANT
24. WILLY MAIKO.....DEFENDANT
25. MUTISYA MICHAEL.....DEFENDANT
26. GEORGE GACHIE.....DEFENDANT
27. KAMUYA KAUNGA.....DEFENDANT
28. KAVOI KIKWAU.....DEFENDANT
29. MASAVI KAVOI.....DEFENDANT
30. KATUMBI MUTUA.....DEFENDANT
31. PETER MBALUTO.....DEFENDANT
32. STEPHEN MUCHERU.....DEFENDANT
33. MUTAVA IKII .....DEFENDANT
34. JOSEPH MUINDE.....DEFENDANT

### RULING

The plaintiff by way of this Chamber Summons expressed to be brought under Order VIII Rule 1(2) and Order VI Rule 13(d) of the Civil Procedure Rules seeks orders that the Defendants defence filed herein on 10<sup>th</sup> March 2005 be struck out and interlocutory judgment be entered in favour of the plaintiffs. He also prays for the costs of this application.

The application is based by grounds as stated on the body of the application and supported by an affidavit sworn by counsel for the plaintiff. Mr. Kaai counsel for the applicant submitted that the defendant after being served with summons entered appearance but did not file the defence upon the plaintiff until after 3 months and after filing the defence the same was not served until 13 days later.

This is conceded by the defendants counsel who in reply submitted that he had problems to trace all the defendant who had a dispute between them and the directors which led the directors to withhold vital documents. But now the dispute has been resolved and the documents have been released by the directors. He urged the court now that the defence has been filed and served to disregard the procedural

technicalities and consider the suit on its own merits.

The dispute in this suit involves land. Having perused both the plaint and the defence I am of a strong view that the defendant ought to be given opportunity to defend the claim bearing in mind that the object of the courts is to decide the rights of the parties and not to punish them for mistakes which they make in the conduct of their cases by deciding otherwise than in accordance to their rights.

The application to strike out the defendant's defence is dismissed. But the defendant will bear the costs of this application.

Dated at Nairobi this 7<sup>th</sup> day of February 2006.

**J.L.A. OSIEMO**

**JUDGE**