



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

**Civil Case 195 of 1997**

**KENYA COMMERCIAL BANK LTD.....**  
**PLAINTIFF/APPLICANT**

**VERSUS**

**JAMES MUKABURU KANYI**

**SIMON GATIMU**  
**NDEBU.....DEFENDANT/RESPONDENT**

**RULING**

The Plaintiff/Applicant's Chamber Summons dated 30<sup>th</sup> July, 2002 is brought under Order VI Rule 13(1) (a), (b), and (c) and also

Order XII Rule 6 of the civil Procedure Rules. The Application was filed by m/s Mathenge & Muchemi Advocates for the Plaintiff/Applicant and it was prosecuted before me by Mr. Mwangi an Advocate from the above mentioned law firm who told me that both Defendants/Respondents had been served with the Chamber Summons and the relevant hearing notice but neither of them has cared to re-act concerning the Chamber Summons. I am surprised that is the position where each Defendant had filed his defence.

In the circumstances while I would have been inclined to look at the application favourably, the problem is that learned counsel for the Applicant do not seem to have been clear in their mind as to what exactly was the position and therefore as to what they wanted the court to do. Their reliance on order VI Rule 13 as well as Order XII Rule 6 is an example of what I am saying as in the pleading so far on record in this matter, I do not see how both orders of the Civil Procedure Rules apply. It is either Order VI Rule 13 or Order XII Rule 6 and not both.

But that is not all. A look at the prayers in the Chamber Summons makes the situation worse. In the first prayer, the Applicants wants orders:-

**“THAT the defence filed herein by the Plaintiff/Applicants be struck out on the ground that the same are frivolous, vexatious and discloses no cause of action.”**

The defences filed by the Plaintiff/Applicants:I do not find those defences in this court case file - so that I strike them out. Since judgment should be entered for the Plaintiff/Applicant only after the alleged defences have been struck out, I cannot enter such a judgment before I strike out the defences which I am not seeing. Not only is the first prayer inconsistent with the second prayer but also the purported supporting affidavit contradicts the first prayer and is generally inconsistent with the first and second prayers.

The above being the position, this Chamber Summons dated 30<sup>th</sup> July, 2002 be and is hereby dismissed. Each party to bear its own costs of the application.

Dated this 15<sup>th</sup> day of June, 2006.

**J. M. KHAMONI**

JUDGE