



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Suit 1009 of 2002**

**BAYER EAST AFRICA LIMITED.....**  
**.....PLAINTIFF**

**VERSUS**

**EXPRESS KENYA LIMITED.....**  
**.....DEFENDANT**

**R U L I N G**

The defendant seeks, by a chamber summon dated 28<sup>th</sup> April 2006 an order that the plaintiff be granted leave to serve the Third Party by way of substituted service through advertisement in print media. There is obviously a mistake in that prayer since the application is made by the defendant. The application was opposed.

The plaintiff in opposition drew the court's attention to an investigation report that was forwarded to the defendant over a year before the present chamber summons was filed. That investigative report revealed that the 3<sup>rd</sup> party company was wound up and its directors had left the jurisdiction of this court. The defendant did not rebut that inference.

The court accepts defence argument that an order for substituted service cannot be made where a company, the proposed 3<sup>rd</sup> party, has been wound up and its directors are out of this court's jurisdiction.

The orders therefore sought by the defendant will not be granted and the chamber summons dated 28<sup>th</sup> April 2006 is dismissed with costs to the plaintiff.

**MARY KASANGO**

**JUDGE**

Dated this 24<sup>th</sup> July 2006

**MARY KASANGO**

**JUDGE**