

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT CIVIL CASE NO. 80 OF 2003

MUCHEMI THIONG'O PLAINTIFF

VERSUS

PETER MBOGO GIATHI DEFENDANT

R U L I N G

Peter Mbogo Gitahi, the applicant seeks to have his originating summons dated 2nd September 2003 amended as the same is erroneously described as a Chamber Summons. Muchemi Thiongo the Respondent objects to the application. There is no doubt that the application dated 2nd September 2003 as drafted is defective. Indeed the court had occasion to make that observation in its ruling of 26th May 2005. The applicant now seeks to amend the originating summons so as to rectify the defect. Under order VI A rule 3 as read with rule 4, of the Civil Procedure Rules pleadings which includes an originating summons can be amended at any stage with leave of the court. In the circumstances of this case it is apparent that no prejudice will be suffered by the Respondent if the court grants leave to have the originating summons amended. Indeed it will enable the court to deal with the merits of the summons without being bogged down with technicalities.

I do therefore allow this application and order that the applicant shall have leave to amend the originating summons within 15 days from the date hereof. The applicant shall pay costs of the application to the Respondent.

Dated this 10th day of May 2005
H. M. OKWENGU
JUDGE