



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**Civil Case 198 of 2001**

REBECCA WAITHIRA JOSEPH)  
ABEL NGURU KIMONDO ).....PLAINTIFF  
Versus  
HANNAH WAMBUI KIBU.....DEFENDANT

**RULING**

In Chamber Summons dated 17th January, 2002, the two Plaintiffs/Applicants want the Defendant's/Respondent's defence herein be struck out for disclosing no defence.

During the hearing of this Chamber Summons, there was no appearance for the Defendant/Respondent and the Applicants did not say much. It is not clear why the Defendant who filed a defence is not reacting to summonses relating to this Chamber Summons and has therefore not filed a replying affidavit. The Chamber Summons is brought under *Section 3A* of the Civil Procedure Act and Order IXA of the Civil Procedure Rules.

I have read the plaint, the defence and the affidavit supporting this Chamber Summons and do not find the Defendant's defence to be a sham because even if there is a written agreement and the Defendant's counsel is a witness to all transactions, there are triable issues such as whether the alleged sale is null and void for lack of consent of the Land Control Board.

Accordingly, the Chamber Summons dated 17th January, 2002 is hereby dismissed. The Defendant/Respondent receives no costs of this Chamber Summons as she did not come out to oppose it.

***Dated this 1st day of July, 2005.***

**J. M. KHAMONI**  
**JUDGE**