



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**MISC CIV APPLI 527 OF 2004**

**IN THE MATTER OF: EXHUMATION OF THE BODY OF**  
**ANNA NAFULA UWE**

**PIUS WEYUSIA WAMALABE .....PLAINTIFF**

**VERSUS**

**THE ATTORNEY GENERAL. ....1<sup>ST</sup> DEFENDANT**

**UWE MEIXNER .....2<sup>ND</sup> DEFENDANT**

**GENGE ABDALLA MWAYANJE .....3<sup>RD</sup> DEFENDANT**

**RULING**

There is preliminary objection raised by Counsel for 2<sup>nd</sup> Respondent. This case is commenced by way of “Misc. civil Application” Headed “Chamber Summons”.

Mrs. Kasmani Moolraj advocate for 2<sup>nd</sup> defendant argues that suits can only be commenced by way of:

1.     Plaint
2.     Petition
3.     Originating Summons

She argues that to commence suit order 4 (1) demands a Plaint or in such other manner as prescribed. Looking at **Court of Appeal Civil Appeal No. 191 of 1999 Commissioner of VAT vs. Atul shah and others** the court said and I quote “A Chamber Summons is an instrument “used to commence a civil action or special proceedings which may be properly transacted by judge or a judicial officer in his chambers or elsewhere in-contra distinction with such action or proceedings being transacted in open court. It is a means of acquiring jurisdiction over a matter in chambers. It is a pleading within the definition under Section 2 of Civil Procedure Act.

In this country the practice of transacting court business in Chambers as opposed to open court is no longer differentiated. All matters may be heard in open court (by the desire of the populace and

litigants). Therefore chamber Summons may not only commence special proceedings in chambers but also in open court. The proceedings for exhumation of a body is special proceedings and it has not been shown that there is a prescribed form of approaching the court.

I do not find any merit in this Preliminary Objection. It is a mere technicality without substance.

I do not uphold the same and I order the matter to proceed to hearing.

Costs in the cause.

**Delivered and dated at Mombasa on 27<sup>th</sup> day of September 2005.**

J. KHAMINWA

J U D G E

27/9/05:

Khaminwa, J

Ms. Kasmani – present

Mr. Okello – present

M/s Kilonzo – not present

Ruling read.

KHAMINWA, J