



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CIVIL SUIT NO. 52 OF 2004**

JOEL KIPKEMOI TOEI.....1ST PLAINTIFF/RESPONDENT

ISAAC KIPRONO BUSIENEI.....2ND PLAINTIFF/RESPONDENT

VERSUS

RECHO C. TUEI.....1ST DEFENDANT/APPLICANT

SARAH C. TUEI.....2ND DEFENDANT/ APPLICANT

REUBEN KIPRONO TUEI.....3RD DEFENDANT/ APPLICANT

AZARIA KIPKEMOI TUEI.....4TH DEFENDANT/ APPLICANT

HENRY KIPKEMOI ARAP TOWETT.....5TH DEFENDANT/ APPLICANT

RULING

The Defendants/Applicants filed an incomprehensible application dated 6th October, 2004 presumably against the Plaintiffs.

The prayers sought therein will reveal why I term it as incomprehensible.

They were as follows:- “

- (1) **THAT** service of this application be dispenses with in the first instance.
- (2) **THAT** this Honourable Court be pleased to give temporary injunction pending the hearing ad determination.
- (3) **THAT** the Defendant/respondent has wilfully rented the premises knowing that I have purchased the same.
- (4) **THAT** the cost of this application be costs in the cause.”

The application is shown to have been filed by counsel for the Plaintiff/Applicant yet from the reading of the affidavit in support of the application that does not seem to be so. Prayer No. 2 above does not disclose who is to be enjoined from doing what. The purported prayer No.3 is not a prayer at all, it is a statement.

A reading of the supporting affidavit seems to indicate that the application was intended to be made by the fifth defendant but it is not clear whether it was directed against the first or the second plaintiff or

both.

A Chamber Summons or a Notice of Motion ought to be precise, comprehensible and ought to disclose without any difficulties the exact orders which are being sought and the party seeking the same and against whom. This is even more important where there are several plaintiffs and defendants in a matter. An affidavit merely comes to support the application and both documents must be legally sound. A competent affidavit cannot substitute or remedy on incompetent application. And I have not said the supporting affidavit herein is good either.

The application is simply bad in law and incompetent. I strike it out but without any costs to the Plaintiffs/Respondents as they had not filed any documents. If the aggrieved party or parties are desirous of any court intervention in this matter they should file a competent application.

DATED, SIGNED & DELIVERED at Nakuru this 26th day of November, 2004.

DANIEL MUSINGA

AG. JUDGE

26/11/2004