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**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 298 OF 2003**

**SAMMY MWANGANGI**

**MUSYOKA ILIMA**

**NZULA MUEMA**

**MULI MWANGO**

**MATHEKA MALEI .....PLAINTIFFS**

**MAUNDU MUTHOKA**

**MUTHUSI MUEMA**

**KISILLU MUNYOKI**

**JANE MUIKIA**

**NZULE MUSYOKA**

**versus**

**THE COMMISSIONER OF LANDS**

**THE ATTORNEY GENERAL**

**THABITI FINANCE CO. LTD.**

**NATIONAL BANK OF KENYA LTD.**

**JAMES GAMAU WAINAINA .....DEFENDANTS**

**LUCY NYAWIRA**

**SERA WANJIKU**

**SIMON MURUTI WANGUO**

**RAPHAEL MUIGAI MWANGI**

**PAUL KAHUTI KONDIAH**

**R U L I N G**

The application before me, made by Chamber Summons dated the 1st December 2003 and filed on the 9th December 2003, seeks to strike out the plaint as against the 4th Defendant for the reasons and upon

the grounds set forth therein.

In her submissions, Miss Oduor for the 4th Defendant/Applicant challenged the Grounds of Opposition dated the 2nd February 2004 and filed on the 10th February 2004 as being incomprehensible as the 4th Defendant has no interest in the two properties referred to therein.

*Mr. Musyoki* , in reply, relying on the said Grounds stated that the 4th Defendant is a chargee of the two properties referred to in the Plaintiffs' said Grounds and is sued as such.

Having considered the application in conjunction with the Plaint, I am not satisfied upon the Plaint as it now stands and is at present drafted that it does show a reasonable as triable cause or triable issues against the 4th Defendant and for this reason, I allow the application and grant the order as prayed to the intent that the Plaint herein is struck out as against the 4th Defendant with costs of the application dated the 1st December 2003 and of the suit to the 4th Defendant on the grounds that the Plaint discloses no reasonable cause of action against the 4th Defendant and that it is frivolous and vexatious and that it is otherwise an abuse of the court process.

Dated and delivered at Nairobi this 12th day of March 2004.

**P. Kihara Kariuki**

**Ag. Judge**