



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL CASE NO. 430 OF 2002**

**SALIM MBARAK BAHAMED ..... PLAINTIFF**

**VERSUS**

**ALI AHMED SURUR ..... DEFENDANT**

**R U L I N G**

Before me for hearing is a Chamber Summons dated 28.11.02 brought under order 39 rule 1,3 and 9 of the Civil Procedure Rules. However, Counsel for the Defendant Mr. Ochwa raised a preliminary point of objection. The grounds are given as:-

1. That the application is bad in law, misconceived, frivolous, vexatious and lacks merit and is an abuse of the court process.
2. That the plaint in support of this application is bad in law and cannot support an application in the nature the plaintiff/applicant has made.
3. That the application is completely misconceived and should be dismissed.
4. That the suit herein is bad in law and should be dismissed.

The main Submission by Mr. Ochwa for the Defendant was that the plaintiff's suit cannot stand as it offends the provisions of Order 29 rules 1,8 and 9. The suit is filed by the plaintiff in his personal capacity and he is claiming property on behalf of a registered Firm and the property is registered in the said Firm's name. Yet the said Firm is not a party to the suit. Mr. Gekonde for the plaintiff said the provisions of order 29 rule 1 are not relevant as the operative word used therein is "May". The relevant parts read as follows:-

*“Any two or more persons claiming or being liable as partners and carrying on business in Kenya may sue or be sued in th e name of the firm (if any) of which such persons were partners at the time of accruingof the cause of action, ----- “ .*

**Underlining Mine**

There is no doubt rule (1) of order 29 gives the parties a choice.

Rule 8 therein in my understanding deals with the stage of execution while Rule 9 refers to suits against persons carrying on business in a name other than their own. It provides as follows:-

*“Rule 9: Any person carrying on business in a name or style other than by own name, may be sued in such name or style as if it were a firm name , and so far as the nature of the case will permit*

**Underlining Mine**

Once again the operative word is “May”. In the circumstances I do not find any reason to uphold the preliminary objection which must fail. Dated and Delivered at Mombasa this 14th day of February, 2003.

**P.M. TUTUI**

**COMMISSIONER OF ASSIZE**