



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL CASE NO.10 OF 2002**

OMAR MOHSIN ..... 1ST PLAINTIFF

AL-AMARY LIMITED ..... 2ND PLAINTIFF

VERSUS

MACKENZI MARITIME HOLDING LTD. .... 1ST DEFENDANT

KENYA PORTS AUTHORITY ..... 2ND DEFENDANT

**RULING**

In the plaint filed against the two Defendants it is disclosed that the First Plaintiff is a male adult residing and working for gain in the Republic of Tanzania. It is also disclosed that the second Plaintiff a company incorporated under the Laws of Kenya, was mandated by first Plaintiff to clear and pay all duties regarding a consignment on behalf of the first Plaintiff at Kilindi harbour.

The first Defendant have applied that the suit of second Plaintiff be struck of on the ground that no reasonable cause of action is disclosed against the first Defendant. The Respondent pleads that agent and principal cannot sue together on the same cause of action and the plaint does not disclose what loss or damage the second Plaintiff has suffered.. No grounds were set out in the application. This offends Order L rule 3. Under Order VI rule 13 1(a) idence is permitted and I find grounds expressly stated on the application. The counsel for Applicant asked the court to examine the plaint and see no cause of action disclosed against first Defendant. He quoted “**Bullen & Leake page 66**” where it is said “an agent who contracts expressly as such cannot personally sue on the contract “. **He also quoted Halsbury Laws of England page 521** which sets out the same principle. The application is opposed by counsel for the Plaintiffs; that it does not fall under Order 6 131(a) and therefore evidence should be produced and that the second Plaintiff has disclosed the loss he stands to lose.

It is my view that the plaint discloses clearly that the second plaintiff is only agent for his principal from whom he should recover under the agency agreement. In the circumstances and in view of the authorities cited I find that the 2nd Plaintiff has no cause of action against the first Defendant and the application is hereby allowed as prayed with costs.

**Dated at Mombasa this 3rd Day of May, 2002.**

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**

Read in presence of Mr. V. Omollo and Mr. Oyoo.

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**