

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 1876 OF 2000

CENTURION CONTRACTORS ENGINEERING BUILDING LTD.

PLAINTIFF

VERSUS

BORDER SERVICE STATION 1ST DEFENDANT

**MANUEL OTIANGALA OMINDE T/A KURONYA AUCTIONEERS 2ND
DEFENDANT**

RULING

This is an application under O. VI Rule 13 (1) (a) of the Civil Procedure Rules to strike out the plaint filed herein by the plaintiff on ground that it discloses no reasonable cause of action. In addition to the foregoing ground, the applicant further states in the body of the application:-

“1. That the instant suit as drawn and filed is barred by the express provisions of Section 34 of the Civil Procedure Act in that the issue of unlawful attachment as alleged by the plaintiff are matters that arise out of execution of the Decree in Busia SRM CCC NO. 259 of 1999 and that the same cannot form a fresh cause of action capable of being litigated upon in a separate and distinct suit.

2. That the suit is expressly barred by the express provisions of section 6 of the Judicature Act, Cap 8 of the Laws of Kenya.

3. That the plaint offends the mandatory provisions of Order VII Rule 1(i) (e) and (2) of the Civil Procedure Rules as amended by Legal Notice No. 36 of 5th May, 2000.”

In my view, by stating that:-

“the issue of unlawful attachment as alleged are matters that arise out of execution of the decree in Busia SRM CCC NO. 259 of 1999”,

the applicant has introduced into the application matters of fact which are expressly barred by O. VI Rule 13(2) of the Civil Procedure Rules. For that reason the application is fatally defective and cannot possibly succeed. It is accordingly struck out with costs.

Dated at Nairobi this 16th day of March, 2001.

**T. MBALUTO
JUDGE**