



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CIVIL CASE NO.11 OF 2014**

**FREDRICK REMARQUE CHITECHI.....PLAINTIFF/APPLICANT**

**VERSUS**

**SAMANTHA ASSOCIATES.....1<sup>ST</sup> DEFENDANT**

**KIPRONO KITTONY..... 2<sup>ND</sup> DEFENDANT**

**GEOGE M. MUSINDI.....3<sup>RD</sup> DEFENDANT**

**KENYA NATIONAL CHAMBER OF**

**COMMERCE & INDUSTRY.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. The application for determination is the Notice of Motion dated 9<sup>th</sup> March, 2017 here the applicant seeks amongst other orders an order restraining the 3<sup>rd</sup> respondent from interfering with Kakamega County Chamber of Commerce and Industry *A/C [particulars withheld] at Co-operative Bank Branch Kakamega* and to compel 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> respondents to appear in court in person. The applicant in the same application is seeking for judicial review orders of prohibition directed to the 3<sup>rd</sup> defendant prohibiting him from claiming leadership. Finally the applicant seeks an order of mandamus compelling the 2<sup>nd</sup> and 4<sup>th</sup> respondents to appear in court in person for interrogation.

2. The application is premised on the grounds on the face thereof and supported by the affidavit of the applicant. The application was served on the advocates for the defendant but they did not file a response.

3. I have perused the court file and I have noticed that the applicant had filed an application dated 1<sup>st</sup> July 2014 in which he was seeking the same injunctive and prohibitive orders against the 3<sup>rd</sup> respondent and others that he is still seeking in the application dated 9<sup>th</sup> March, 2017. The application dated 1<sup>st</sup> July 2014 was dismissed by *Justice Sitati* on 22<sup>nd</sup> June 2016. The current application seeking the same injunctive orders is therefore an abuse of the process of the court.

The applicant is also seeking for an order of mandamus to compel the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents to appear in court in person for interrogation and harmonization of membership and accounts. However the applicant has not obtained leave of the court to file an application for an order of *mandamus* as required by *Rule 1* of *order 53* of the Civil Procedure Rules. Further to this, it is my considered view that an order for mandamus cannot be granted on an interim basis. These prayers should form part of the main suit.

In view of the above, the application dated 9<sup>th</sup> March, 2017 is misconceived. The same is dismissed with no order as to costs.

**Delivered, signed and dated at Kakamega this 13<sup>th</sup> day of July, 2017.**

**J. NJAGI**

**JUDGE**

In the presence of:

None ..... for the plaintiff/applicant

N/A ..... for the defendants

Paul ..... Court assistant