



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**Civil Suit 649 of 2007**

**SATURNINO CARCELLAR MACHANCOSES.....PLAINTIFF/APPLICANT**

**VERSUS**

**HORATIUS DA GAMA ROSE..... 1<sup>ST</sup> DEFENDANT/RESPONDENT**

**FERNANDA DA GAMA ROSE..... 2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

Having carefully considered what was brought before me during the hearing of this chamber summons dated 12<sup>th</sup> June 2008, the same be and is hereby granted as I do entirely agree with the learned counsel for the plaintiff/Applicant when he states, supporting the chamber summons, that the defence filed by the defendants in this suit is scandalous, frivolous and vexatious; it is otherwise an abuse of the court process and it will delay the fair trial of this suit. A defence which despite available evidence of the fact of the accident, denies the fact of the occurrence of that accident, must be a sham defence.

Accordingly, the defendant's defence in this suit is hereby struck out and the suit to proceed formal proof.

The Defendants/respondents to pay costs of this Chamber Summons.

Delivered this 3<sup>rd</sup> day of July 2009.

**J.M. KHAMONI**

**JUDGE**