



**REPUBLIC OF KENYA**

**COURT OF APPEAL AT NAIROBI**

**CIVIL CASE 1165 OF 2003**

JOHN BOSCO NGETA MAUNDU.....PLAINTIFF

Versus

WILLIAM WAMBUA KIWIA.....1<sup>ST</sup> DEFENDANT

CHARLES MUTUKU.....2<sup>ND</sup> DEFENDANT

BAUMANN'S LTD.....3<sup>RD</sup> DEFENDANT

THE HON ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT

**RULING**

Mr. Mwangi and Mr. Kitulu, learned Counsel conducting the Applicants and the Respondents cases respectively in the Chamber Summons before me dated 29<sup>th</sup> July 2009 recorded a consent that I do decide the said Chamber Summons on the basis of their relevant filed affidavits.

From what Mr. Mwangi told me, what remains to be decided in the chamber Summons is prayer number 3 and prayer number 5. Prayer number 3 states

**“THAT the orders dismissing the 2<sup>nd</sup> Defendant’s application dated the 10<sup>th</sup> of December 2008 be set aside and the application reinstated for hearing.”**

Prayer number 5 is for costs.

I have had the opportunity to read the said affidavits in the light of what is stated in the Chamber Summons and grounds thereon and bearing in mind the powers of this Court in terms of Section 3 A of the Civil Procedure Act, I am inclined to give further opportunity to the Applicant in the Chamber Summons dated 10<sup>th</sup> December 2008 hoping he has learned a lesson from the past so that from now on delaying tactics including the conduct of ignoring court orders on his part or his Counsel will be avoided, to lead to finalization of this suit without further delay.

Accordingly, the Chamber Summons is hereby granted in terms of prayer number 3 and the Applicant/2<sup>nd</sup> Defendant to pay costs of the Chamber Summons to the Respondent/Plaintiff.

Counsel for the 2<sup>nd</sup> Defendant and Counsel for the Plaintiff jointly or any of them separately to take hearing date for the Chamber  
Summons dated 10<sup>th</sup> December 2008 at the Registry on priority basis.

The said hearing be before any other judge in the Civil Division of this court.

Dated this 9<sup>th</sup> day of October 2009.

**J.M. KHAMONI**

**JUDGE**