



Ethics & Anti-Corruption Commission v Otieno & another (Anti-Corruption and Economic Crimes Civil Suit 4 of 2018) [2022] KEHC 10380 (KLR) (Anti-Corruption and Economic Crimes) (19 May 2022) (Ruling)

Neutral citation: [2022] KEHC 10380 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT 4 OF 2018**

EN MAINA, J

MAY 19, 2022

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

BOB KEPHAS OTIENO 1ST RESPONDENT

**EVELINE AWINO OGUTU T/A NYANGUME ENTERPRISE 2ND
RESPONDENT**

RULING

1. On 8th February 2022 the Plaintiff/Applicant filed a Notice of Motion of even date seeking to strike out the Defendant's statement of defence dated 17th January 2022 on grounds that the same discloses no defence in law, is prejudicial and only intended to delay the trial. Counsel noted that the Defendants had filed a statement of defence on 20th April 2018 and that the defence filed on 17th January 2022 was not an amended defence and as such it ought to be struck out as a party cannot have two statements of defence at the same time. It was Counsel's contention that the defence also offends Order 10 Rule 3 of the Civil Procedure Rules as it was not served upon the Plaintiff within the time stipulated by the court. Counsel contended that the 1st Defendant filed the defence merely to delay the conclusion of this case as he has never been ready to proceed.
2. The application is however vehemently opposed. It is the Respondents' contention that the statement of defence dated 17th January 2022 was filed pursuant to leave granted by this court on 30th November 2022. The 2nd Respondent has also argued that the defence discloses a reasonable defence and hence it ought not be struck out.



3. I have considered the Notice of Motion, the grounds thereof, the supporting affidavit, the replying affidavit, the rival submissions of Learned Counsel for the parties and the applicable law. The issue that arises for determination is whether the defence filed on 17th January 2022 should be struck out.
4. It is indeed correct that this court granted leave to the 1st Defendant to file an amended response (defence) to the Plaintiff's claim. The leave was granted on 30th November 2021 and the directions given by this court was that the amended defence was to be filed and served within 7 days of that date. In effect the amended defence should have been filed by latest 8th December 2021. It is my finding therefore that the impugned defence was filed hopelessly out of time.
5. Order 8 Rule 6 of the [Civil Procedure Rules](#) provides that:-

“6. Where the court has made an order giving any party leave to amend, unless that party amends within the period specified or, if no period is specified, within fourteen days, the order shall cease to have effect, without prejudice to the power of the court to extend the period.”

It is clear from the above provision that by the time the defence was filed the leave granted had ceased to have effect. No leave was sought to extend the time for filing the defence and I note that no explanation for the delay has been given either in the replying affidavit or in the submissions of Counsel for the Respondent. Clearly therefore the defence is not properly on record and whereas Article 159(1) of [the Constitution](#) enjoins this court to overlook procedural technicalities and instead consider the substance of the matter, it is my finding that it would be a travesty of the justice to admit a defence which was filed in utter violation of the orders of this court as it was filed without leave for filing it out of time. The defence was also never served. Moreover, the defence is not an amended defence as it does not comply with Rule 7 of Order 8 in that it is not endorsed with the date of the amendment (Rule 7 (1)) and the amendments have not been shown in red ink (Rule 7 (2)). This court cannot therefore deem it as properly filed and since there was already a defence on record the 1st defendant cannot have two defences on record. The defence filed on 17th January 2022 is accordingly struck out with costs to the Plaintiff/Applicant. It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY THIS 19TH DAY MAY, 2022

E. N. MAINA

JUDGE

