



**Meinhardt (Singapore) PTE Limited & another v White Lotus Projects Limited & 7 others (Civil Case E026 of 2021) [2022] KEHC 12265 (KLR) (Commercial and Tax) (12 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12265 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**COMMERCIAL AND TAX**  
**CIVIL CASE E026 OF 2021**  
**A MSHILA, J**  
**AUGUST 12, 2022**

**BETWEEN**

**MEINHARDT (SINGAPORE) PTE LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**MEINHARDT (TURKEY) ENGINEERING & CONSULTING  
LLC ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**WHITE LOTUS PROJECTS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**WHITE LOTUS PROJECTS INCORPORATED ..... 2<sup>ND</sup> DEFENDANT**

**JABAVU VILLAGE LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**ABDULKADIR AHMED HUSSEIN ..... 4<sup>TH</sup> DEFENDANT**

**POOSAPATI SITA RAMACHANDRA RAJU ..... 5<sup>TH</sup> DEFENDANT**

**AHMED ALI ABDI ..... 6<sup>TH</sup> DEFENDANT**

**JABAVU INVESTMENTS LIMITED ..... 7<sup>TH</sup> DEFENDANT**

**SHANTILAL KHIMJI SHAH ..... 8<sup>TH</sup> DEFENDANT**

**RULING**

**Background**

1. There are two applications to be canvassed together. The first application is a notice of motion dated June 7, 2021 premised under the provisions of order 2 rule 15(1)(b), (c) and (d), order 51 rule (1) of the *Civil Procedure Rules* and sections 3 and 34 of the *Civil Procedure Act*. The applicants sought the following orders;



- a. The court to strike out the plaint dated January 4, 2021 with costs to the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants.
  - b. The cost of this application and the suit be paid by the plaintiff.
2. The application was supported by the sworn affidavit of Ahmed Ali Abdi who stated that the plaint dated January 4, 2021 does not raise or disclose any reasonable cause of action against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendant/applicants. Even a semblance of a cause of action known in law is not pleaded against the said defendant/applicants.
3. Further, that the plaint is frivolous, vexatious and an abuse of the court process since it pleads no legal complaint against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendant/applicants. The applicants have no legal or factual dealings or relationship with the plaintiff/respondents that can trigger a legal complaint or cause of action in favour of the plaintiff/respondents. The parties are strangers in all aspects.
4. The 1<sup>st</sup> plaintiff is a company registered in Singapore and domiciled in the United Arab Emirates with no known business in Kenya and has no address in Kenya. The 2<sup>nd</sup> plaintiff is a company incorporated in Turkey and domiciled in the United Arab Emirates.
5. The plaintiff companies are shell companies who have no known assets or capital and have no contractual or other dealings with the 2<sup>nd</sup> defendant. In the pleadings filed in court, the plaintiff/respondents plead that they entered into various agreements with the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants and have not pleaded similar contractual dealings with the 2<sup>nd</sup> defendant.
6. The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendant/applicants are directors of the 2<sup>nd</sup> defendant. The plaintiffs make no legal case why the directors should be held responsible for the actions and omissions, if any of the 2<sup>nd</sup> defendant. No case of piercing or lifting the 2<sup>nd</sup> defendant's corporate veil has been made by the plaintiffs.
7. The 2<sup>nd</sup> defendant also filed a notice of motion dated May 28, 2021 under order 2 rule 15(1)(b), (c) and (d), order 51 rule (1) of the *Civil Procedure Rules, 2010* and sections 3 and 3A of the *Civil Procedure Act* for orders that;
  - a. The court to strike out the plaint dated January 4, 2021 with cost as against the 2<sup>nd</sup> defendant.
  - b. The cost of this application and the suit be paid by the plaintiff.
8. The application was supported by the sworn affidavit of Abdulkadir Ahmed Hussein who stated that the plaint dated January 4, 2021 does not raise or disclose any reasonable cause of action against the 2<sup>nd</sup> defendant. Even a semblance of a cause of action known in law is not pleaded against the 2<sup>nd</sup> defendant. The plaint is frivolous, vexatious and an abuse of the court process since it pleads no legal complaint against the 2<sup>nd</sup> defendant.
9. The 2<sup>nd</sup> defendant had no legal or factual dealings or relationship with the plaintiff/respondents that can trigger a legal complaint or cause of action in favour of the plaintiffs. The parties are strangers in all aspects. The 1<sup>st</sup> plaintiff is a company registered in Singapore and domiciled in the United Arab Emirates with no known business in Kenya and has no address in Kenya. The 2<sup>nd</sup> plaintiff is a company incorporated in Turkey and domiciled in the United Arab Emirates.
10. The plaintiff companies are shell companies which have no known assets or capital and have no contractual or other dealings with the 2<sup>nd</sup> defendant. In the pleadings filed in court, the plaintiffs plead



that they entered into various agreements with the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants and have not pleaded similar contractual dealings with the 2<sup>nd</sup> defendant.

11. A legal complaint or cause of action known to any law has not been raised or pleaded by the plaintiffs in their plaint dated January 4, 2021 against the 2<sup>nd</sup> defendant. In the premise, the plaint herein is filed as a game of chance.
12. In response, the respondents filed a replying affidavit dated August 31, 2021 and stated that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are related companies and share a common office at CIC Plaza II, 5<sup>th</sup> floor, Upper Hill, Nairobi. The 1<sup>st</sup> defendant was formed as a special purpose vehicle for engaging service providers and carrying out the development on the 2<sup>nd</sup> defendant's property LR No 31/219 situate in Upper Hill.

### **Applicants' Case**

13. In the submissions on the first application, the 5<sup>th</sup>, 6<sup>th</sup> & 7<sup>th</sup> defendant/applicants stated that the plaint filed by the plaintiff principally is against the 1<sup>st</sup> and 3<sup>rd</sup> respondents. It is clear from paragraphs 9, 10, 11, 12 and 13 of the plaint, that the plaintiffs allege that they entered into a written contract with the 1<sup>st</sup> and 3<sup>rd</sup> defendants for provision of services. the plaintiffs allege that the said agreements were breached by the 1<sup>st</sup> and 3<sup>rd</sup> defendants.
14. It was the applicants' view that since the purported agreement was signed between the plaintiffs and the 1<sup>st</sup> and 3<sup>rd</sup> defendants an action allegedly grounded on breach of contract can only be maintained as against parties that entered into the contract. Other parties had no relation or dealing with the plaintiffs cannot be sued for breach of contract.
15. It is trite law that a contract binds the parties who are privy to it and who have executed it for consideration. Third parties who are total strangers to a contract can neither be saddled with its burdensome consequences or enjoy the fruits of the contract. That is where the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants find themselves. It is common ground that they were not parties to the contract in question and have no nexus whatsoever.
16. The only reason they are being sued is the averments in the plaint that they are directors of the 2<sup>nd</sup> defendant company. Even as against the 2<sup>nd</sup> defendant company the plaintiffs plead no cause of action known to law. If a party seeks to pierce the corporate veil and seeks to disregard the distinct and separate legal personality of a company and go against its directors, it is incumbent upon the party so seeking to lift the veil to advance cogent and solid facts and legal principles. The same is lacking in the suit herein and the plaintiffs plead no facts or law as to why they have sued the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants.
17. Further, the juridic complaint that can constitute a cause of action against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants is totally lacking in this case. In the premise, it is unsustainable and ought to be dismissed with costs.
18. On its part the 2<sup>nd</sup> defendant submitted that the only reason it is being sued is the averments in the plaint that it shares a common office with the 1<sup>st</sup> defendant at CIC Plaza II, 5<sup>th</sup> floor, Upper Hill, Nairobi. The plaintiffs plead no cause of action known in law against the 2<sup>nd</sup> defendant. The 2<sup>nd</sup> defendant has no legal or even factual dealings or relationship with the plaintiffs that can trigger a legal complaint or cause of action as against it.
19. The applicants relied on the following authorities in support of the submissions herein:

- a) Machakos HC Civil Appeal No 123 of 2018: *Madison Insurance Company Limited v Augustine Kamanda Gitau* [2020] eKLR



- b) Malindi I-ICC No 13 of 2019: *Fred Kiithusi Kula & another v Housing Finance Company Limited & another* [2021] eKLR.

### Respondents' Case

20. It was the respondents' submission that that the rules of natural justice require that the court must not drive away any a litigant from the seat of justice, without a hearing, however weak it's may be.
21. The respondents made reference to the case of *DT Dobie & Company (Kenya) Ltd v Muchina* [1982] KLR 1 at p 9 where it was held as follows:
- “No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”
22. The court's power to strike out pleadings is to be exercised sparingly and cautiously, because the court exercises the power without being fully informed on the merits of the case through discovery and oral evidence.

### Issues For Determination

23. Having considered the application, the response and the written submissions the court frames only one issue for determination;
- a. Whether the 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants should be struck out from these proceedings;

### Analysis

24. The application was brought under order 2 rule 15 of the *Civil Procedure Code* which deals with striking out of pleadings and provides as follows;
- “ 15.
- (1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that-
- (a) It discloses no reasonable cause of action or defence in law; or
- (b) It is scandalous, frivolous or vexatious; or
- (c) It may prejudice, embarrass or delay the fair trial of the action; or
- (d) It is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”
25. The striking out of pleadings is a drastic remedy that should only be resorted to where a pleading is a complete sham. The Court of Appeal in the case of *Blue Shield Insurance Company Ltd v Joseph Mboya Oguttu* [2009] eKLR restated these principle thus:

“The principles guiding the court when considering such an application which seeks striking out of a pleading is now well settled. Madan, JA (as he then was) in his judgment in the case of *DT Dobie and Company (Kenya) Ltd v Muchina* [1982] KLR 1 discussed the issue at



length and although what was before him was an application under order 6 rule 13 (1) (a) which was seeking striking out a plaint on grounds that it did not disclose a reasonable cause of action against the defendant, he nonetheless dealt with broad principles which in effect covered all other aspects where striking out a pleading or part of a pleading is sought. It was held in that case inter alia as follows: -

“The power to strike out should be exercised after the court has considered all facts, but it must not embark on the merits of the case itself as this is solely reserved for the trial Judge. On an application to strike out pleadings, no opinion should be expressed as this would prejudice fair trial and would restrict the freedom of the trial Judge in disposing the case.”

We too would not express our opinion on certain aspects of the matter before us. In that judgment, the learned judge quoted Dankwerts, LJ in the case of *Cail Zeiss Stiftung v Ranjuer & Keeler Ltd and others (No 3)* [1970] ChpD 506, where the Lord Justice said:-

“The power to strike out any pleading or any part of a pleading under this rule is not mandatory; but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending pleading.”

We may add that like Madan, JA, said, the power to strike out a pleading which ends in driving a party from the judgment seat should be used very sparingly and only in cases where the pleading is shown to be clearly untenable.”

26. In the first application, the applicant asked the court to strike out the plaint dated January 4, 2021 as it does not raise or disclose any reasonable cause of action against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendant/applicants.
27. It is a well-known legal principle that a company is a distinct legal entity from its members. The question that arises in this case is whether the plaintiff/respondents should be restrained from bringing a cause of action against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants who are directors since the company is a legal person separate from its shareholders and directors capable of instituting suit or being sued as a body corporate.
28. It was the respondents’ case that the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants are the directors of the 2<sup>nd</sup> defendant and where directors are acting fraudulently or where the directors are using the company as a mask to commit fraud, then then directors can be sued.
29. In *Victor Mabachi & another v Nurtturn Bates Ltd* [2013] eKLR, the court held that a company  
“...as a body corporate, is a *persona juridica*, with separate independent identity in law, distinct from its shareholders, directors and agents unless there are factors warranting a lifting of the veil”.
30. The corporate veil of a company may be lifted and or pierced due to fraudulent activities, improper conduct of the members or directors of a company or where the circumstances of the case warrant in order to do justice. At this stage the corporate veil is yet to be lifted as the alleged fraudulent activities are yet to be confirmed.



31. In *Gitbunguri Dairy Farmers Co-operative Society v Ernie Campbell & Co Ltd & another* [2018] eKLR, the Court of Appeal held: -

“In the present instance, Mr Baiya claimed that the liabilities accrued by the 2<sup>nd</sup> respondent including the decretal sum and the costs of suit, were to be paid from the 2<sup>nd</sup> respondent’s account. Why would Mr Baiya, a director in the 2<sup>nd</sup> respondent and who definitely had full knowledge of its affairs (that it had no attachable assets or financial means to satisfy the decree) insist that the decree be settled by it? We draw the same inference as the 1<sup>st</sup> respondent that the same was meant to defeat the satisfaction of the decree, an improper purpose warranting the court to go behind the veil of incorporation. This is especially since the benefit of the works carried on by the 1<sup>st</sup> respondent was realized and continues to be enjoyed by the appellant. Surely in the circumstances of this case, the appellant did not expect a court of equity to shut its eyes to the 1<sup>st</sup> respondent’s plight and leave it without a remedy. The appellant incorporated the 2<sup>nd</sup> respondent and then had it enter into an agreement with the 1<sup>st</sup> respondent knowing well that it had no financial means or assets to meet the obligations related with the contract. In the absence of any reasonable excuse or justification from the appellant for its conduct, then we find it safe to draw an improper and fraudulent purpose necessitating lifting the 2<sup>nd</sup> respondent’s veil of incorporation for purposes of ensuring justice to both parties.”

32. From the foregoing, it is clear that there is a process to be followed and it is only after the said channel has been taken that the corporate veil can be lifted and in this case it is premature to sue the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants.
33. It is the court’s view that the cause of action be struck out as against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendant/respondents on condition that the said directors file witness statements and testify during the hearing of the suit.
34. The 2<sup>nd</sup> application sought to strike out the plaint as against the 2<sup>nd</sup> defendant/respondent for the reason that there is no cause of action known in law pleaded against it.
35. On its part, the plaintiff/respondents argued that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are related companies and share a common office at CIC Plaza II, 5<sup>th</sup> floor, Upper Hill Nairobi. The 1<sup>st</sup> defendant was formed as a special purpose vehicle for engaging service providers and carrying out the development on the 2<sup>nd</sup> defendant/applicant’s property LR No 31/219 situate in Upper Hill.
36. It was the plaintiff/respondents’ averment in its plaint that the 2<sup>nd</sup> defendant/applicant being the owner of the property directly benefitted from the plaintiff/respondent’s designs which were submitted for approval to Nairobi City County, NEMA and National Construction Authority.
37. In the case of *Elijah Sikona & another v Mara Conservancy & 5 others* [2013] eKLR where it was held as follows: -

“22. There are well established principles which guide the court in exercise of its discretion under these rules. Striking out is a jurisdiction which must be exercised sparingly and in clear and obvious cases. Unless the matter is plain and obvious, a party to civil litigation is not to be deprived of his right to have his suit determined in a full trial. The court ought to act cautiously and carefully and consider all facts of the case without embarking upon a trial



thereof before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court”.

38. Likewise, in *Wedlock v Moloney* [1965] 1 WLR 1238 it was held that: -

“...Summary jurisdiction of court was never intended to be exercised by a minute and protracted examination of documents and the facts of the case in order to see if the plaintiff really has a cause of action...”

39. In light of the above, there is need for the court to interrogate the role played by the 2<sup>nd</sup> defendant/applicant in accordance with the plaintiff/respondent’s assertions in the course of determining the suit herein.

### **Findings And Determination**

40. From the foregoing reasons this court makes the following findings and determinations;

- i. The application dated May 28, 2021 made by the 2<sup>nd</sup> defendant/applicant is found to be devoid of merit and it is hereby dismissed;
- ii. The application dated June 7, 2021 is found to be partially meritorious;
- iii. The cause of action against the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants be and is hereby struck out on the conditions set out hereunder;
- iv. The 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants as directors of the 2<sup>nd</sup> defendant do file and serve witness statements within thirty (30) days from the date hereof; in default they shall remain enjoined in these proceedings;
- v. Costs shall abide the outcome of the suit.
- vi. The matter be mentioned on August 24, 2022 before the Deputy Registrar for compliance and case management.

Orders accordingly.

**DATED SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 12<sup>TH</sup> DAY OF AUGUST, 2022.**

**HON A MSHILA**

**JUDGE**

**In the presence of;**

**Miss Rono holding brief for SC Ahmednasir for the 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents**

**Lucy-----Court Assistant**

