



**Ngethe v Unique Loo Limited & 3 others (Civil Suit 16 of 2020)  
[2022] KEHC 12997 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 12997 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL SUIT 16 OF 2020  
MM KASANGO, J  
SEPTEMBER 22, 2022**

**BETWEEN**

**RACHEL WANJIKU NGETHE ..... PLAINTIFF**

**AND**

**UNIQUE LOO LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**ERICK KIMALI MUTUKU ..... 2<sup>ND</sup> DEFENDANT**

**TOM MAKALE ABUTO ..... 3<sup>RD</sup> DEFENDANT**

**LINDA JACQUELINE NELIMA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The application dated 12<sup>th</sup> July, 2021 is filed by the 3<sup>rd</sup> and 4<sup>th</sup> defendants. They seek that their names be struck out of this suit. The application is based on the grounds that the plaintiff filed this case and join them as 3<sup>rd</sup> and 4<sup>th</sup> defendants; and that the plaintiff will suffer no prejudice if the defendants are struck out.
2. The plaintiff by a plaint dated 22<sup>nd</sup> October, 2020 filed this case against four defendants. The claim in this suit is for special and general damages following an accident where the plaintiff was injured. In that plaint the plaintiff pleaded that the 2<sup>nd</sup> defendant “who was authorised driver of motor vehicle registration number KBR 661B (The subject vehicle) negligently drove, managed and/or controlled the subject vehicle which collided or rammed into motor cycle where the plaintiff was a passenger. The plaintiff in the plaint proceeds to outline the particulars of negligence of that 2<sup>nd</sup> defendant’s and particulars of his injury.
3. By the application before me, the 3<sup>rd</sup> and 4<sup>th</sup> defendants stated that the subject motor vehicle is registered in the 1<sup>st</sup> defendant’s name. Further, that the 3<sup>rd</sup> and 4<sup>th</sup> defendants are directors/shareholders of the 1<sup>st</sup> defendant. The 3<sup>rd</sup> and 4<sup>th</sup> defendants annexed to their affidavit in support of the application



copy of the log book and a search of the subject motor vehicle which indeed confirmed the ownership of the subject motor vehicle is in the name of the 1<sup>st</sup> defendant. The plaintiff relied on grounds of opposition in opposing the application. The essence of those grounds is that the court can pierce the corporate veil of the 1<sup>st</sup> defendant.

#### **Discussion and Determination.**

4. Order 1 Rule 10(2) of the Civil Procedure Rules provides:-

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

5. The court has power to strike the name of a party in an action. In this case, the 3<sup>rd</sup> and 4<sup>th</sup> defendants were included in this case purely because they are directors of the 1<sup>st</sup> defendant. The plaintiff needs to be reminded that a limited liability company which the 1<sup>st</sup> defendant is, has a separate entity apart from its members/directors. The [Halbury Laws of England 4<sup>th</sup> Edition](#), Butterworth, 429 states the legal position of companies thus:-

“A company, not being a physical person, can only act either by resolution of its members in general meeting, or by its agents. It is not the agent of its member and a member as such is not the agent of the company, the company being a separate entity or legal person apart from its members, who are not even collectively, the company”.

6. Also, see the holding in the case *Moir Vs Wallerstainer* (1975) 1 ALL ER 849 at p 857:-

“It is a fundamental principle of our law that a company is a legal person with its own corporate identity, separate from the directors or shareholders and with its own property rights and interests to which alone it is entitled. If it is defrauded by a wrong doer, the company itself is the one person to sue for the damage. Such is the rule in *Foss V Harbottle* [1843] 2 Hane 461. The rule is easy enough to apply when the company is defrauded by outsiders. The company itself is the only one who can sue. Likewise, when it is defrauded by insiders of the minor kind, once again the company is the only person who can sue.” (Per Lord Denning)

7. The plaintiff through her plaint has not pleaded any blameworthiness on the part of 3<sup>rd</sup> and 4<sup>th</sup> defendants. The only paragraph that touches on those defendants is the final paragraph where the plaintiff plays that judgment be entered for her against all the defendants jointly and severally. In the body of the plaint, there are no particulars of negligence attributed to 3<sup>rd</sup> and 4<sup>th</sup> defendants.

8. It is clear that the fate of this suit as against the 3<sup>rd</sup> and 4<sup>th</sup> defendants is sealed. It is as provided under Order 2 Rule 15(1) (a), that it discloses no reasonable cause of action against those defendants. That [Rule](#) provides that at any stage of the proceedings, the court can order a suit to be struck out or amended for several reasons set out thereof but what is relevant here is provision of Rule 15(1)(a) which empowers the court to strikeout pleading for disclosing no reasonable cause of action. The court in the case of [Elijah Sikona & George Pariken Narok on Behalf of Trusted Society of Human Rights Alliance](#)



*Vs. Mara Conservancy & 5 Others* Civil Case No. 37 of 2013 (2014) eKLR per Anyara Emukule, J (As he then was) set out the principles to be considered when striking out is sought, thus:-

“22. There are well established principles which guide the court in the 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.”

9. I believe I have said enough to show that there is no reason to saddle the 3<sup>rd</sup> and 4<sup>th</sup> defendants with an action which does not plead their blameworthiness. It is a suit that discloses no reasonable cause of action against the 3<sup>rd</sup> and 4<sup>th</sup> defendant.

### **Disposition**

10. The order of this Court in respect to the Notice of Motion application dated 12<sup>th</sup> July, 2021 are as follows:-
- a. An order is hereby issued striking out with costs the 3<sup>rd</sup> and 4<sup>th</sup> defendants from this suit.
  - b. The plaintiff shall pay the costs of the application dated 12<sup>th</sup> July, 2021.
  - c. An amended plaint shall be filed, reflecting order (b) above, within 21 days.

**RULING DATED AND DELIVERED AT KIAMBU THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2022.**

**MARY KASANGO**

**JUDGE**

**Coram:**

Court Assistant : Mourice

For the Plaintiff :- Mr. Ongango HB Miss Akello

For 3<sup>rd</sup> and 4<sup>th</sup> Defendants : - N/A

For 1<sup>st</sup> and 2<sup>nd</sup> Defendants : - N/A

RULING delivered virtually.

**MARY KASANGO**

**JUDGE**

